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4:19-CV-5055-TOR

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# Supplemental Data

- ① Nonsovereign State: A state that is a constituent part of a greater state that includes it and 1 or more others and to whose government is a subject. A state that is not complete and self existant. Among other things, a nonsovereign state has no power to engage in foreign relations.
- ② Article III. Section 2. - United States Constitution  
"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution."
- ③ United States Constitution: The 1787 document ratified by the original 13 colonies to reform and restructure the national government and establish the relationship between the federal government and the states collectively and the relationship with the individual states.
  - 1) Constitutions are mainly devices used for establishing Rights and limiting Powers.
- ④ Limited Government: A system, usu. Constitutionally based in which the reach of a government is purposely restricted so that the government has minimal ability to abridge the people's civil rights.
  - 1) The Constitution of the United States establishes limited government by imposing positive restraints on the Federal government and the States. In some matters,

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the individual is protected against the Federal government, in others against the State and still in others against both. These limitations are not merely political theories or vague declarations of rights; they are rules expounded and applied by the courts, enforced by proper executive authorities and respected as a creed.

⑤ Grand Jury Clause: The clause of the 5<sup>TH</sup> Amendment to the United States Constitution requiring an indictment by a Grand Jury before a person can be tried for a serious offense.

⑥ Constitutional Guarantee: A promise contained in the United States Constitution that supports or establishes an inalienable right such as the right to due process.

⑦ Supreme Courts interpretation of the Constitutional requirement of an indictment for infamous crimes:

1) United States v. Cochran (1985)

"An offense, other than criminal contempt, must be prosecuted by an indictment if it is punishable: A) by death; or B) by imprisonment of more than 1 year."

2) Mackin v. United States

"Infamous crimes are crimes punishable by imprisonment in a penitentiary."

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3) United States v. Moreland

"The sentence that the Law may impose, not the sentence actually imposed, determines whether a grand jury indictment is required."

4) United States Law - 18 U.S.C. § 4083

"An infamous crime is any crime punishable by more than 1 year imprisonment in a penitentiary."

⑧ Indictment: The formal written accusation of a crime, made by a Grand Jury and presented to a court for prosecution against the accused person.

Indict: To charge (a person) with a crime by formal legal process; esp. by Grand Jury presentation.

⑨ Grand Jury: A body of 16-23 people who decide whether to issue indictments.

1) Fed. Crim. P. 6 and Fed. Crim. P. 7

⑩ Grand Juries determine if there is sufficient probable cause to assume that a crime has been committed and protects citizen's from unfounded prosecutions.

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1) United States v. Cotton

"Grand Juries serve a vital function as a check on prosecutorial power."

2) U.S. 441 F.3d 44

"Grand Juries investigate criminal allegations and protect citizens against prosecutorial misconduct."

3) U.S. 781 F.2d 238

"Grand Juries secure person's against arbitrary or oppressive action."

4) United States v. Suarez

"Grand Juries are defendant's main protection against unfounded criminal charges."

5) United States v. Caruto

"Grand Juries act as primary security to the innocent against hasty, malicious and oppressive persecution."

6) Durham v. Horner

"Grand Juries determine probable cause and provide basis for trial."



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7) United States v. Coachman

"Grand Juries shield the accused from unjust prosecution by indicting only upon probable cause."

8) U.S. 286 F.3d 153

"Grand Juries act as buffers between the people and the government."

9) United States v. Erickson

"Grand Juries are investigatory bodies charged with the responsibility of determining whether or not a crime has been committed."

10) United States v. York

"Grand Juries are not merely investigative bodies, but also exist for the protection of citizen's against unfounded criminal prosecutions."

⑪ Supremacy Clause: Article VI of the United States Constitution declaring that the Constitution of the United States is the "supreme Law of the Land" and enjoys legal superiority over any conflicting provision of a State constitution or laws.

⑫ 18 U.S.C. § 4083

"An infamous crime is any crime punishable by more than 1 year imprisonment in a penitentiary."

⑬ Criminal Procedure: The rules governing the mechanisms under which crimes are investigated, prosecuted, adjudicated and punished. It includes the protection of the accused person's Constitutional rights.

Due Process: The conduct of legal proceedings according to established rules and principles for the protection and enforcement of private rights.

⑭ The rights of life, liberty and property so fundamentally important as to require compliance with due process standards of fairness and justice.

⑮ Bill of Indictment: An instrument presented to a Grand Jury and used by the jury to declare whether there is enough evidence to formally charge the accused of a crime.

⑯ Constitutional Right: A right guaranteed by the Constitution.

Fundamental Constitutional Right: A right that is specifically identified in the Constitution or has been found to be protected under the Due Process or Equal Protection Clauses.

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⑪ Amendment XIV - United States Constitution

"All persons born or naturalized in the United States and subject to the jurisdiction thereof, are Citizens of the United States and the State wherein they reside."

⑫ A guarantee ceases to be a guarantee the moment that it is no longer guaranteed. A guarantee can not only be guaranteed part of the time, or only guaranteed until the guarantee is needed because that is not a guarantee, rather a lie.

⑬ The words "Due Process of Law" were no doubt intended to convey the meaning as the words "By the Law of the Land." - Magna Carta

⑭ That no freeman ought to be taken, imprisoned, disseized of his freehold, liberties, privileges or franchises, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the Law of the Land.

⑮ Tyranny: The severe deprivation of a natural right by a ruler wielding power unjustly and arbitrarily to oppress the Citizenry.

⑯ Article I. Section 9. - United States Constitution

"The privilege of the Writ of Habeas Corpus shall not be suspended."

②③ Amendment I - United States Constitution

"Congress shall make no law abridging the right of the people to peaceably assemble and to petition the government for a redress of grievances."

②④ Declaration of Independence - United States of America

"We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable rights, that among these are life, liberty and the pursuit of happiness."

②⑤ Article III. Section 1. - United States Constitution

"The judicial power of the United States, shall be vested in one supreme Court and in such inferior Courts as the Congress may from time to time ordain and establish."

1) All courts are inferior to the supreme Court. Therefore, the established procedures and processes of the superior Court (Supreme) must be followed, otherwise the inferior courts obtain superiority and the Supreme Court can no longer enjoy Supremacy over the inferior courts.

2) If inferior courts have the authority to deny the rights guaranteed by the Supreme Court, then the Supreme Court is no longer supreme, as the inferior court assumes greater authority.



②6 Constitutions are mainly devices used for establishing Rights and limiting Powers. Constitutionalism advances naturally, together with the expansion of suffrage rights and democratization.

②7 Amendment V - United States Constitution

"No person shall be deprived of life, liberty or property without due process of law."

②8 "Federalism is not about any single state or small faction of states imposing their will on the Nation. It is about states serving, in the aggregate, as an essential buffer between the central government and the people." - Thomas Jefferson

②9 Amendment XIV - United States Constitution

"No state shall deprive any person of life, liberty or property, without due process of Law."

③0 Due Process Clause: The Constitutional provision that prohibits the government from unfairly or arbitrarily depriving persons of life, liberty or property.

③1 The word "Constitute", which is the root word for our Constitution means, "To bring together, to set up, in harmony with a political," it derives from Latin; "To place together." By definition, it implies agreement and harmony, a willingness to comply with certain social and communal values. So what happens when that harmony is disturbed? According to the



evolution of a Constitution, advancement or progression of relationship (laws) occurs through suffrage rights (voting). But voting is a function of the constituency and not the individual. Advancement does not occur arbitrarily; it is the result of majority opinion, as to prevent loss of harmony. Individual authority to violate that which has been constituted is neither granted nor implied, as such authorization would be detrimental to the sustainability and stability of such Constitution. We cannot allow individual infringement upon majorities and agreed upon code of conduct. Such behavior is contrary to the intended goal of a Constitution, which is to provide true liberty and freedom to the constituents governed by the societal relationships established by the majority. True freedom exists only in the absence of power. Power is the mechanism utilized to remove or limit liberty therefore, my freedom is robbed when your power's are exercised. That is why Constitutions' primary purpose is to, "establish rights, but limit powers," as this is the basis for any country claiming to be free.

③② Privileges and Immunities Clause: The Constitutional provision prohibiting a state from favoring or discriminating against citizens.

③③ United States of America: A federal republic formed after the late 18<sup>TH</sup> century War of Independance and made up of 48 conterminous states, plus the state of Alaska, plus the state of Hawaii in the Pacific.

(34) Sovereign State: A state that possesses an independent existence, being complete in itself, without being merely part of a larger whole to whose government it is subject.

(35) Supremacy Clause: Article VI of the United States Constitution declaring that the Constitution of the United States is the "supreme Law of the Land" and enjoys legal superiority over any conflicting provision of a State Constitution or laws.

(36) Article III, Section 1. - United States Constitution

"The Judges, both of the supreme and inferior Courts, shall hold their Offices during good Behavior."

Good Behavior: A standard by which judges are considered fit to continue their tenure, consisting in the avoidance of criminal behavior.

(37) Oath or Affirmation Clause: The clause of the United States Constitution requiring members of Congress and the State Legislators and all members of the executive or judicial branches - State or local to pledge an oath or affirmation to support the United States Constitution.

1) The person making the oath implicitly invites punishment if the statement is untrue or if the promise is broken. The legal effect of an Oath is to subject the person to penalties of the crime of perjury if the testimony is false.

- ③⑧ Incorporation: The process of applying the provisions of the Bill of Rights to the states by interpreting the 14<sup>TH</sup> Amendment Due Process Clause as encompassing those provisions.
- ③⑨ Preemption: The principal (derived from the Supremacy Clause) that a federal law can supercede or supplant any inconsistent state law or regulation.
- ④⑩ Bill of Rights: A section in the Constitution (First 10 Amendments) guaranteeing that governmental powers will not be used in certain ways.
- ④⑪ That in all criminal and capital persecutions, a man hath a right to demand the cause and nature of his accusations, to be confronted with the accusers and witnesses, to call for evidence and to be allowed counsel in his favor and to a fair and speedy trial by an impartial jury.
- ④② Bordenkircher v. Hayes
- "To punish a person because he has done what the Law plainly allows him to do is a due process violation of the most basic sort."
- ④③ Beck v. Ohio
- "Probable cause may not be established simply by showing that the officer who made the challenged arrest or search subjectively

believed he had grounds for his action."

"If subjective good faith alone were the test, the protection of the Fourth Amendment would evaporate and the people would be 'secure in their persons, houses, papers and effects' only in the discretion of the police."

Subjective: Based on an individual's perceptions, feelings or intentions.

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(43) Slavery: A situation in which one person has absolute power over the life, fortune and liberty of another. The practice of keeping individuals in such a state of bondage.

Slave Labor: Work for which one is paid an unfairly small amount of money.

(44) Involuntary Servitude: The condition of one forced to labor, for pay or not, for another by coercion or imprisonment.

(45) Duly: In a proper manner; in accordance with legal requirements.

(46) Federal Government: A national government that exercises some degree of control over smaller political units that have surrendered some degree of power in exchange for the rights to participate in national political matters.



(47) Ignorantia Juris Non Excusat: (Ignorance is not an excuse) Lack of knowledge about a legal requirement or prohibition is never an excuse to a criminal charge.

(48) Article I. Section 1. - United States Constitution

"All legislative Powers herein shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives."

Article I. Section 8. - United States Constitution

"The Congress shall have the Power To make all laws which shall be necessary and proper for carrying into Execution the foregoing Powers and all other Powers vested by this Constitution."

Article V. - United States Constitution

"The Congress, whenever two thirds of both Houses shall deem it necessary, shall propose Amendments to this Constitution."

Legislative Branch: The division of government responsible for creating, amending or destroying Laws.

Legislation: The process of making or enacting positive laws in written form, according to some type of formal procedure, by a branch of government constituted to perform this process.



1) The Legislative Branch cannot transfer the power of making laws to any other hands.

(49) Plessy v. Ferguson - Justice John Marshall Harlan

"Our Constitution is color-blind and neither knows nor tolerates classes among citizens. In respect to civil rights, all citizens are equal before the Law."

(50) Amendment XIV - United States Constitution

"No state shall deny to any person within its jurisdiction the equal protection of the Laws."

1) Laws can only be legitimate if they can be described as just and equal.

(51) Federal: Of, or relating to, or involving a system of associated governments with a vertical division of governments into national and regional components having different responsibilities; esp. pertaining to the national government of the United States.

(52) Federalism: The legal relationship and distribution of power of between the national and regional governments within a federal system of government and in the United States particularly, between the federal government and the state governments.

(53) Federal Law: The body of law consisting of the United States Constitution, federal statutes and regulations, U.S. Treaties and federal common law.

(54) Equal Protection Clause: Fourteenth Amendment of the United States Constitution guaranteeing that the government must treat a person or class of persons the same as it treats other person's or class's in like circumstances.

(55) Bill of Indictment: An instrument presented to a Grand Jury and used by the jury to declare whether there is enough evidence to formally charge the accused of a crime.

(56) True Bill: A Grand Juries notion that a criminal charge should go before a petty jury for trial.

(57) Imbler v. Pachtman

"This court has never suggested that the policy considerations which compel civil immunity for certain government officials also place them beyond the reach of the Criminal Law. Even judges, cloaked with absolute civil immunity for centuries, could still be punished criminally for willful deprivations of Constitutional rights."

(58) Amendment XIV - United States Constitution

"No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."

## 59) Immunities

1) Absolute Immunity: A complete exemption from civil liability, usually afforded to officials while performing particularly important functions, such as representatives enacting legislation and judges.

2) Judicial Immunity: The immunity of a judge from civil liability arising from the performance of judicial duties.

3) Prosecutorial Immunity: The absolute immunity of a prosecutor from civil liability ~~for~~ decisions made and actions taken in a criminal prosecution.

60) Justice: The fair treatment of people. The fair and proper administration of laws.

61) Perjury: The act or instance of a person deliberately making material false or misleading statements while under oath; esp. the willful utterance of untruthful testimony under oath or affirmation.

### Judicial Oath:

"I, — —, do solemnly swear that I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; that I will faithfully discharge the duties of the office on which I am about to enter. So help me God."

⑥2) Obstruction of Justice: Interference with the orderly administration of Law and Justice, as by giving false information or withholding evidence from a police officer, prosecutor or jury, or by harming or intimidating witnesses or jurors.

1) Obstruction of Justice is a crime in most jurisdictions.

2) The goal to proscribe every willful act of corruption, intimidation or force which tends in any way to distort or impede the administration of Law, either civil or criminal.

⑥3) Perverting the Course of Justice: The skewing of the disposition of legal proceedings, as by fabricating or destroying evidence, witness tampering, witness threatening or witness intimidating.

⑥4) John F. Kennedy

"This nation was founded by men of many nations and backgrounds. It was founded on the principle that all men are created equal and that the rights of every man are diminished when the rights of one man are threatened. The heart of the question is, whether we are going to treat our fellow Americans as we want to be treated?"

⑥5) Title 28 U.S.C. §1331 - Federal Question (Federal Rules of Civil Procedure)

"The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws or treaties of the United States."



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(66) Rigid Constitution: A constitution whose terms cannot be altered by ordinary forms of legislation, only by special amending procedures.

1) The United States Constitution is an example. It cannot be changed without the consent of two-thirds both House and Senate of the United States Congress (U.S. Constitution Article V)

(67) Title 28 U.S.C. § 1343 - Civil Rights and Elective Franchise

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person."

(3) To redress the deprivation, under the color of any state law... of any right... secured by the Constitution of the United States... providing for equal rights... of all persons within the jurisdiction of the United States.

(68) Original Jurisdiction: A courts power to hear and decide a matter before any other court can review the matter.

(69) Comity Clause: The clause of the United States Constitution giving citizens of one state the right to all privileges and immunities enjoyed by citizens of other states. (Article IV. Section 2.)



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⑦0 Statute: A law passed by a legislative body in written form.

1) Constitutions are direct legislation by the people and must be included in the statutory law, as they are the highest form that statutes can assume.

⑦1 Systemic Discrimination: An ingrained culture that perpetuates discriminatory policies and attitudes toward certain classes of people within society or a particular industry, profession, company or geographic location.

⑦2 Civil Right: Any of the individual rights of personal liberty guaranteed by the Bill of Rights and by the 13<sup>TH</sup>, 14<sup>TH</sup>, 15<sup>TH</sup> and 19<sup>TH</sup> Amendments to the United States Constitution.

1) Civil Rights include especially the right to vote, the right of due process and the right of equal protection under the Law.

⑦3 Color of Law: The appearance or semblance, without the substance, of a legal right.

1) The term usually implies a misuse of power made possible because the wrongdoer is clothed with the authority of the state.

2) State action is synonymous with color of state law in the context of federal civil-rights statutes or criminal law.

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(74) Duty: That which one is bound to do and for which someone else has a corresponding right.

1) "The judges in every state shall be bound thereby any Thing in the Constitution or laws of any state to the Contrary notwithstanding."

(75) Equal Protection: The 14<sup>TH</sup> Amendment guarantees that the government must treat a person or class of persons the same as it treats other persons or classes in like circumstances.

1) In today's Constitutional jurisprudence, equal protection means that legislation that discriminates must have a rational basis for doing so. And if legislation affects a fundamental right or involves a suspect classification, it is unconstitutional unless it can withstand strict scrutiny.

2) The equal protection principle is exclusively associated with written constitutions and embodies guarantees of equal treatment normally applied not only to the procedural enforcement of laws, but also to the substantive content of their provisions. In other words, the equal protection of laws is invariably treated as a substantive Constitutional principle which demands that laws will only be legitimate if they can be described as just and equal.

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⑦⑥ Negligence in Law: Failure to observe a duty imposed by law.

⑦⑦ Statutory Obligation: An obligation - whether to pay money, perform certain acts or discharge duties - that is created by or arises out of a statute, rather than based on an independent contractual or legal relationship.

⑦⑧ Affirmative Duty: A duty to take a positive step to do something.

⑦⑨ Direct Discrimination: Differential treatment of a person or a particular group of people based on race, gender, or other characteristic.

⑧① Discrimination: The effect of state laws that favor local interests over out-of-state interests.

1) Federalism is not about a single state or small faction of states imposing its will upon the nation.

2) The effect of a law or established practice that confers privileges on a certain class or that denies privileges on a certain class.

3) Differential treatment, especially a failure to treat all persons equally when no reasonable distinction can be found between those favored and those not favored.

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(81) Positive Law: Enacted law - The codes, statutes and regulations that are applied and enforced in the courts. Positive law literally means law established by human authority.

1) A judge is tethered by positive law.

(82) Negligence Per Se: Negligence established as a matter of law, so that the breach of duty is not a jury question.

1) Negligence per se usually arises from a statutory violation.

(83) Obligation: A legal or moral duty to do or not do something.

1) It refers to anything that a person is bound to do or forbear from doing, whether the duty is imposed by law, contract, promise, social relations, courtesy, kindness or morality.

2) "The judges in every state shall be bound thereby any Thing in the Constitution or laws of any state to the Contrary notwithstanding."

(84) Constitutional Challenge: A claim that a law or governmental action is unconstitutional.

(85) State Action: Anything done by a government; especially, in Constitutional Law, an intrusion on a person's rights (esp. Civil Rights) either by a governmental entity or by a private requirement that can only be enforced by governmental action.



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- (86) Facial Challenge: A claim that a law is unconstitutional on its face - that is, that it always operates unconstitutionally.
- (87) Conflict of Laws: A difference between the laws of different states or countries in a case in which a transaction or occurrence central to the case has a connection to two or more jurisdictions.
- 1) The body of jurisprudence that undertakes to reconcile such differences or to decide what law is to be right to govern in these situations.
- (88) Legal Certainty: The clarity, unambiguity and stability in a system of law allowing those within the system to regulate their conduct according to the law's dictates.
- (89) Supreme Law of the Land: The U.S. Constitution. Acts of Congress made in accordance with the U.S. Constitution. U.S. Treaties.
- (90) Supremacy: The position of having the superior or greatest power or authority.
- (91) Article I, Section 2. - WA State constitution

"The Constitution and the Laws of the United States shall be the supreme law of the land; and the judges in every state shall be bound thereby any Thing in the Constitution or Laws of any state to the Contrary notwithstanding."



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- ⑨2 Public Injury: A loss or an injury stemming from a breach of duty or violation of a right that affects the community as a whole.
- ⑨3 Public Right: A right belonging to all citizens and usually vested in and exercised by a public office or political entity.
- ⑨4 Wrong: Breach of one's legal duty; violation of another's legal right.
- 1) A wrong may be described as anything done or omitted contrary to legal duty, considered in so far as it gives rise to liability.
- ⑨5 Civil Wrong: A violation of noncriminal law, such as a tort, a breach of contract or trust, a breach of statutory duty, or a defect in performing a public duty; the breach of a legal duty treated as the subject matter of a civil proceeding.
- ⑨6 Deliberate Indifference: The careful preservation of one's ignorance despite awareness of circumstances that would put a reasonable person on notice of a fact essential to a crime.
- ⑨7 Unconstitutional: Contrary to or in conflict with a constitution, especially the U.S. Constitution.
- ⑨8 Unwritten Law: A Rule, custom or practice that has not been enacted in the form of a statute.
- 1) The term traditionally applies to Case Law.

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- (99) Common Law: The body of law derived from judicial decisions rather than from statutes or constitutions. Case Law.
- (100) Arbitrary: Depending on individual discretion; of, related to, or involving a determination made without consideration of or regard for facts, circumstances, fixed rules or procedures. Of a judicial decision founded on prejudice or preference rather than on reason or fact.
- (101) Fifth Amendment: The Constitutional amendment, ratified with the Bill of Rights in 1791, providing that a person cannot be 1) required to answer for a capital or otherwise infamous crime unless a grand jury issues an indictment or presentment, 2) subjected to double jeopardy, 3) compelled to engage in self-incrimination on a criminal matter, 4) deprived of life, liberty, or property without due process of law, or 5) deprived of private property for public use without just compensation.
- (102) Act of Congress: A statute that is formally enacted in accordance with the legislative power granted to Congress by the United States Constitution.
- (103) Violation: An infraction or breach of the law. The act of breaking or dishonoring the law; the contravention of a right or duty.
- 1) Contravention: An act of violating a legal condition or obligation.

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(104) Affirmative Statute: A law expressed in positive form to require that something be done; one that directs the doing of an act.

(105) Article I. Section 28. - WA State constitution

"Every judge of the supreme court and every judge of a superior court shall, before entering upon the duties of his office, take and subscribe an oath that he will support the Constitution of the United States and the constitution of the state and will faithfully and impartially discharge the duties of his office to the best of his ability, which oath shall be filed in the office of the secretary of state."

(106) Obligate: To make someone have to do something because it is law or has become that persons duty.

1) Looked at from the point of view of the person entitled, an obligation is a right; looked at from the point of view of the person bound, it is a duty.

(107) Derelection of Duty: A deliberate or accidental failure to do what should be done, especially as part of one's job.

(108) Misconduct: A derelection of duty; unlawful, dishonest, or improper behavior, especially someone in a position of authority or trust.

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(109) Right: Something that is due to a person by just claim.

1) Right is correlative to duty. Where there is no duty, there can be no right. But the converse is not necessarily true. In order for a duty to create a right, it must be a duty to act or forbear.

(110) Procedural Right: A right that derives from legal or administrative procedure; a right that helps in the protection or enforcement of a substantive right.

(111) Equitable: Just; consistent with principles of justice and right.

(112) Discretionary Duty: A duty that allows a person to exercise judgment and choose to perform or not perform.

(113) Absolute Nullity: An act that is incurably void because it is against public policy, law or order.

1) Absolute nullity can be invoked by any party or by the court.

(114) Petition of Right: The petition of right reconfirmed Magna Carta's provision that no freeman could be imprisoned but by lawful judgment of his peers or "by the law of the land." Americans later relied on this provision in their argument against taxation without representation. Other sections of the act of



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1628 provided that no one should be imprisoned or be forced to incriminate himself by having to answer for refusing an exaction not authorized by Parliament. Condemnation of imprisonment without cause or merely on executive authority strengthened the Writ of Habeas Corpus.

- (115) Partial Law: A statute designed (usually intentionally) to affect the rights of only one particular person or only certain classes of people, rather than all people.
  - (116) Oppression: The act or instance of unjustly exercising authority or power so that one or more people are unfairly or cruelly prevented from enjoying the same rights that other people have.
  - (117) Fourteenth Amendment: The Constitutional amendment, ratified in 1868, whose primary provisions effectively apply the Bill of Rights to the states by prohibiting states from denying due process and equal protection and from abridging the privileges and immunities of U.S. Citizenship.
  - (118) Civil Liberty: Freedom from undue governmental interference or restraint; especially the right of all citizens to be free to do as they please while respecting the rights of others.
- 1) This term refers to freedoms and other liberties associated with the Bill of Rights.



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(119) Strict Scrutiny: In due process analysis, the standard applied to suspect classifications in equal protection analysis and to fundamental rights.

1) Fundamental Constitutional Right: Any right specifically identified in the Constitution.

(a) "Indictment by a Grand Jury" is specifically stated within the Bill of Rights of the United States Constitution, making it a Fundamental Right.

2) Suspect Classification: A statutory classification based on race, national origin or alienage and therefore, subject to strict scrutiny under equal protection analysis.

(a) "Geographic Location" and "state of citizenship" would both be Suspect Classifications.

(120) Compelling-State-Interest Test: A method for determining the Constitutional validity of a law, whereby the the governments interest in the law and its purpose are balanced against an individuals Constitutional right that is affected by the law.

1) Under strict scrutiny, the state must establish that it has a compelling interest that justifies and necessitates the law in question

2) The compelling-state-interest test is used in equal protection analysis when the disputed law requires strict scrutiny.

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- (121) Oppressor: A person or group that treats certain people unfairly or cruelly, preventing them from enjoying the same rights that other people in society have.
- (122) Due Process Analysis: An action or set of actions intended to eliminate existing and continuing discrimination, to redress lingering effects of past discriminations and to create systems and procedures to prevent future discrimination, all by taking into account individual membership in a minority group so as to achieve minority representation in a larger group.
- (123) Class: A group of people who have a common legal position, so that all their claims can be effectively adjudicated in a single proceeding.
- 1) Protected Class: A class of people who benefit by protection by statute, such as Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on race, sex, national origin or religion.
- (124) Title 42 U.S.C. § 1981- Equal Rights Under the Law
- "All persons within the jurisdiction of the United States shall have the same right in every state to the full and equal benefit of all laws and proceedings."

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(125) Written Law: Statutory law, together with constitutions and treaties, as opposed to judge-made law.

(126) Constitutional Law §171- Duty of State Courts to Protect Constitutional Rights

"(4) State courts, equally with federal courts, are under an obligation to guard and enforce every right secured by the federal Constitution."

(127) Tort: A civil wrong, other than breach of contract, for which a remedy may be obtained. A breach of duty that the law imposes on persons who stand in a particular relation to one another.

(128) Title 18 U.S.C. § 555 - Charging by Information

"The charging of crimes by only information applies only to offenses that are not infamous crimes."

(129) Common Law Rule: A judge made rule as opposed to a statutory one. A legal rule, as opposed to an equitable one.

1) Equitable: Consistent with principles of justice and right.

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(130) United States v. Cocoman - 903 F.2d. 127 (1990)

"When an indictment is required, failing to charge the defendant by indictment is a jurisdictional defect that deprives the district court of power to act and is fatal to a conviction resulting from the use of another charging instrument."

(131) Article I. Section 25. - WA State constitution

"Offenses heretofore required to be prosecuted by indictment may be prosecuted by information, or by indictment, as shall be prescribed by law."

(132) Four Corners Rule: The principle that no extraneous evidence should be used to interpret an unambiguous document.

1) Question: Where in the "4 corners" of the United States Constitution does it state that a United States Citizen can be held to answer for an infamous crime without first obtaining an indictment by a Grand Jury?

(133) Tyranny: The severe deprivation of a natural right by a ruler wielding power unjustly and arbitrarily to oppress the citizenry.



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(134) Article II. Section 29. - WA State constitution

"The labor of inmates of this state shall not let out by contract to any person, copartnership, company or corporation, except as provided by statute, and the legislature shall by law provide for the working of inmates for the benefit of the state, including the working of inmates in state-run inmate labor programs."

1) State Account System: A prison disciplinary system in which prison industries are run by the state itself, the prisoners furnishing the labor, prisoners work in factories with state supplied materials.

(a) International laws refer to such systems in China and North Korea as "sweet shops."

(135) Seperation of Powers: The division of governmental authority into 3 branches of government, each with specific duties on which neither of the other branches can encroach.

1) The doctrine that such a division of governmental authority is the most desirable form of government because it establishes checks and balances designed to protect the people against tyranny.

2) The reason why the framers of the Constitution established checks and balances is that they understood, by knowledge and experience, that a relative handful of imperfect human beings exercising unrestrained authority over society would result in tyranny.



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(136) Right of Family Integrity: A fundamental and substantive due-process right for a family unit to be free of unjustified state interference.

1) Most courts require a state to establish by clear and convincing evidence that interference with familial relationship is justified.

(137) Absolute Duties: A duty to which no corresponding right attaches. There are 4 kinds of absolute duties:

① Duties not regarding persons, such as owed to God

② Duties owed to persons indefinitely, such as spouse

③ Self regarding duties

④ Duties owed to the sovereign

(138) Good Faith: A state of mind consisting in 1) Honesty in belief or purpose, 2) Faithfulness to one's duty or obligation, 3) Observance of reasonable commercial standards of fair dealing in a given trade or business, or 4) Absence of intent to defraud or seek unconscionable advantage.

(139) Freedom of Intimate Association: The right to form and preserve certain intimate human relationships without intrusion by the state because the relationships safeguard individual freedom.

1) The group of relationships protected by the right to freedom of intimate association are familial in nature and are

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characterized by deep attachments, a high degree of commitment and the sharing of distinctly personal aspects of life. The exclusion of others is an essential characteristic of these relationships.

(140) Unjust: Contrary to justice; not fair or reasonable.

(141) Alienation of Affections: A tort claim for willful or malicious interference with a marriage by a third party without justification or cause or excuse. The elements are:

- ① Some wrongful conduct by the defendant with the plaintiff's spouse,
- ② The loss of affection by the plaintiff's spouse, and
- ③ A causal relationship between the defendant's conduct and the loss of consortium.

(142) Good Moral Character: A pattern of behavior that is consistent with the community's current ethical standards and that shows an absence of deceit or morally reprehensible conduct.

(143) Civil Disobedience: A deliberate, but non violent act of law breaking to call attention to a particular law or set of laws believed by the actor to be of questionable legitimacy or morality.

1) Civil disobedience serves the laws needs for growth or

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change. Reform would come according to reason and justice.

2) Sharp changes in law depend partly upon the stimulus of protest.

(144) Freedom of Conscience: The right to follow one's beliefs in matters of morality without governmental interference.

(145) Freedom of Belief: The right to hold and display a belief in practice, teaching or observance without governmental interference.

(146) Freedom of Religion: The right to adhere to any form of religion or none, to practice or abstain from practicing religious beliefs and to be free from governmental interference with or promotion of religion, as guaranteed by the First Amendment and Article VI of the U.S. Constitution.

(147) Natural Law: A philosophical system of legal and moral principals purportedly deriving from a universal conception of human nature or divine justice rather than from legislative or judicial action.

1) Natural law is often an idealization of the opposite to that which prevails. Where inequality or privilege exists, natural law demands its abolition.

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2) Natural law is discoverable by Reason. That means that the greatest human reasoning can discover it.

3) Natural law are the principals and norms that are transcendent, creative, divine source of existence, meaning and value the source of their obligation which is divine wisdom.

(148) Government intrusion is only justified to prevent harm to others, not to influence a persons private morality.

(149) Overt Act: An outward, physical manifestation of the will performed, especially by a conspirator. An act that indicates an intent to kill or seriously harm another person and thus gives the person a justification to use self defense. An outward act, however innocent in itself, done in furtherance of a conspiracy, treason or criminal act.

(150) Habeas Corpus: A writ employed to bring a person before a court, most frequently to ensure that the persons imprisonment or detention is not illegal.

(151) Challenge: An act or instance of formally questioning the legality or legal qualifications of a person, action or thing.

(152) Habeas Corpus Act: One of the 4 great charters of English Liberty securing subjects speedy relief from all unlawful imprisonments.



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(153) Article I, Section 9. - United States Constitution

"The Privilege of the Writ of Habeas Corpus shall not be suspended."

(154) Article I, Section 22. - WA State constitution

"In criminal prosecutions the accused shall have the right to demand the nature and cause of the accusation against him, to have a copy thereof."

(155) Amendment VI - United States Constitution

"In all criminal prosecutions, the accused shall enjoy the right to be informed of the nature and cause of the accusation."

(156) Police State: A state in which the political, economic and social life of its citizens is subject to repressive governmental control and arbitrary uses of power by the ruling elite, which uses its police as the instrument of control.

(157) Unlawful Arrest: An arrest without legal cause or authority.

(158) Criminal convictions are so serious in their consequences that it is felt that an accused person should be freed, if there is any fair or reasonable doubt about his guilt, even though there seems to be considerable likelihood that he did commit the crime.

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(159) Fruits of a Crime: The proceeds acquired through criminal acts.

(160) Exclusionary Rule: A rule that excludes or suppresses evidence obtained in violation of an accused persons Constitutional rights.

1) The deterrence of unreasonable searches and seizures is a major purpose of the exclusionary rule. But the rule serves other purposes as well. There is for example, "the imperative of judicial integrity," namely that courts do not become "accomplices in willful disobedience of a Constitution they are sworn to uphold." A third purpose is that of "assuring the people - all potential victims of unlawful government conduct - that the government would not profit from its lawless behavior, thus minimizing the risk of seriously undermining popular trust in the government."

(161) Fruit-of-the-Poisonous Tree Doctrine: The rule that evidence derived from an illegal search, arrest, or interrogation is inadmissible because the evidence (the "fruit") was tainted by the illegality (the "poisonous tree") of the way in which it was obtained.

(162) Conflict of Authority: A disagreement between two or more courts, often courts of coordinate jurisdiction, on a point of law.

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(163) Tyranny: The breaking down of the division and distribution of governmental powers.

(164) James Madison's Definition of Tyranny

"The accumulation of all powers, legislative, executive and judiciary, in the same hand, whether of one, a few, or many and whether hereditary, self appointed or elective, may justly be pronounced the very definition of tyranny."

(165) Witness Tampering: The act or instance of Obstructing Justice by intimidating, influencing or harrassing a witness before or after the witness testifies.

1) Several state and federal laws, including the Victim and Witness Protection Act of 1982 provide criminal penalties for tampering with witnesses or other persons in the context of a pending investigation or official proceeding.

2) Title 18 U.S.C. § 1512

3) Clearly stated by the Petitioner during the trial following numerous failed attempts to inform and correct the trial judges behavior, "I hereby enact my right to Citizen's Arrest against you sir, for Obstruction of Justice, knowingly and willingly impeding in the judicial process."

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(166) Suppression of Evidence: A trial judges ruling that evidence offered by a party should be excluded because it was illegally acquired. The destruction of evidence or the refusal to give evidence at a criminal proceeding.

1) This is considered a crime (Obstruction of Justice)

2) The prosecutions withholding from the defense of evidence that is favorable to the defendant.

(167) Amendment VI - United States Constitution

"In all criminal prosecutions, the accused shall enjoy the right to be confronted with the witnesses against him."

(168) Standard of Care: In the law of negligence, the degree of care that a reasonable person should exercise.

(169) Tortious Liability: Liability that arises from the breach of a duty that 1) is fixed by the law, 2) is categorical in nature and owed to any person who is within the scope of the duty, and 3) when breached, is redressable by an action for compensatory unliquidated damages.

(170) Qualified Immunity: Immunity from civil liability for a public official who is performing a discretionary function, as long as the conduct does not violate clearly established Constitutional or statutory rights.



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(171) Malice Exception: A limitation on a public officials qualified immunity, by which the official can face civil liability for willfully exercising discretion in a way that violates a known or well established right.

(172) Moral Turpitude: Conduct that is contrary to justice, honesty or morality; especially an act that demonstrates depravity.

1) In the area of legal ethics, offenses involving moral turpitude, such as fraud or breach of trust - traditionally make a person unfit to practice law.

2) Fraud: A knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment.

(a) The unfair use of Power arising out of the parties relative positions and resulting in an unconscionable bargain.

3) Actual Fraud: A concealment or false representation through an intentional or reckless statement or conduct that injures another who relies on it in acting.

(a) Any kind of artifice by which another is deceived.

(173) Knowingly: In such a manner that the actor engaged in prohibited conduct with the knowledge that the social harm that the law was designed to prevent was practically certain to result.

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1) Knowingly describes to the mental state resulting in the second highest level of criminal culpability. A person who acts purposely wants to cause the social harm, while a person who acts knowingly understands that the social harm will almost certainly be a consequence of the action, but acts with other motives and does not care whether the social harm occurs.

(174) Wanton Misconduct: An act, or failure to act when there is a duty to do so, in reckless disregard of another's rights, coupled with the knowledge that injury will probably result.

(175) Gross Negligence: A lack of even slight diligence or care. A conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party.

(176) Self Defense: The use of force to protect oneself, one's family, or one's property from a real or threatened attack.

(177) Affirmative Defense: A defendant's assertion of facts and arguments that, if true, will defeat the plaintiff's or prosecution's claim, even if all the allegations are true.

1) The defendant bears the burden of proving an affirmative defense. Examples include ① Duress, ② Insanity and ③ Self Defense.

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(178) Malice: The intent, without justification or excuse, to commit a wrongful act. Reckless disregard of the law or of a person's legal rights.

(179) Citizen's Arrest: An arrest of a private person by another private person on grounds that 1) a public offense was committed in the arrestor's presence, or 2) The arrestor has reasonable cause to believe that the arrestee has committed a felony.

1) Mr. Ekstrom's actions were felonious and occurred in the presence of the arrestor, thus fulfilling the requirements of Citizen's Arrest.

(180) Misfeasance in Public Office: The tort of excessive, malicious or negligent exercise of statutory powers by a public officer.

(181) Official Misconduct: A public officer's corrupt violation of assigned duties by malfeasance, misfeasance or nonfeasance.

(182) Confrontation Clause: The Sixth Amendment provision guaranteeing a criminal defendant's right to confront an accusing witness face-to-face and cross examine that witness.

(183) Corrupt Conduct: Conduct that might or actually does adversely affect the honest and impartial exercise of official functions by a public official.

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(184) Bad Faith: Dishonesty of belief, purpose, or motive.

1) Types of bad faith: ① Evasion of the spirit of the bargain, ② Lack of diligence and slacking off, ③ Willful rendering of imperfect performance, ④ Abuse of Power to specify terms, and ⑤ Interference with or false failure to cooperate in the other party's performance.

(185) Complicity: Involvement in a crime together with other people; association or participation in a criminal act as an accomplice.

1) Under the Model Penal Code, a person can be a accomplice as a result of either that person's own conduct, or the conduct of another for which that person is legally accountable.  
(a) Model Penal Code § 2.06

2) Involvement in or knowledge of a situation that is morally wrong or entails dishonesty.

(186) Misprison: Concealment or nondisclosure of a serious crime by one who did not participate in the crime. Seditious conduct against the government. An officials failure to perform the duties of public office.

1) Misprison of Treason and Misprison of Felony consist of the criminal default of one in regard to the crime of another.  
Title 18 U.S.C. § 4



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(187) Conspiracy: An agreement by two or more persons to commit an unlawful act, coupled with an intent to achieve the agreement's objective and (in most states) action or conduct that furthers the agreement.

1) Title 18 U.S.C. § 371

2) Conspiracy is a separate offense from the crime that is the object of the conspiracy (Obstruction of Justice)

3) A conspiracy ends when the unlawful act has been committed or when the agreement has been abandoned.

(a) Agreement is ongoing and has not been abandoned.

4) When two or more persons combine for the purpose of inflicting upon another person an injury which is unlawful in itself, or which is rendered unlawful by the mode in which it is inflicted and in either case, the other person suffers damage, they commit the tort of conspiracy.

(188) Willful Misconduct: Misconduct committed voluntarily and intentionally.

(189) Falsifying a Record: The crime of making false entries or otherwise tampering with a public record with the intent to deceive, injure or conceal wrongdoing

1) Title 28 U.S.C. § 1506, 2071 and 2073

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(190) Cover Up: An attempt to prevent authorities or the public from discovering the truth about something; especially the concealment of wrongdoing by a conspiracy of deception, nondisclosure and destruction of evidence, usually combined with a refusal to cooperate with investigators.

1) A cover up often involves Obstruction of Justice.

(191) Citizen: Someone who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy ALL its Civil Rights and protections.

(192) Positive Misprison: Seditious conduct against the government. An officials failure to perform the duties of public office.

(193) Malicious Arrest: An abuse of process by which a person procures the arrest (and often imprisonment) of another by means of judicial process, without any reasonable cause.

1) Prosecutorial Vindictiveness: The act or instance of intentionally charging a more serious crime or seeking a more severe penalty than is proper, especially in retaliation for a defendant's lawful exercise of a Constitutional Right.

(194) Manifest Error: An error that is plain and indisputable and that amounts to a complete disregard of the controlling law or the credible evidence on the record.

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(195) Plain Error: An error that is so obvious and prejudicial that an appellate court should address it despite the parties failure to raise a proper objection at trial.

1) A plain error is often said to be so obvious and substantial that failure to correct it would infringe a party's due-process rights and damage the integrity of the Judicial process.

(196) Prejudice: Damage or detriment to one's legal rights or claims. A preconceived judgment or opinion formed with little or no factual basis.

(197) Oppression: An offense consisting in the abuse of discretionary authority or by a public officer who has an improper motive, as a result of which a person is injured.

1) Every public officer commits extortion and oppression who in the exercise, or under the color of exercising the duties of his office, does any legal act, or abuses any discretionary power with which he is vested by law from an improper motive, the existence of which motive may be inferred either from the nature of the act, or from the circumstances of the case.

(198) Faithful: Trustworthy in honoring vows, promises or allegiances; loyalty. Truthful; worthy of belief or confidence.

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(199) Title 4 U.S.C. §101- Flag and Seal, Seat of Government and the States

"Oath by members of legislators and officers- Every member of a State legislature and every executive and judicial officer of a State, shall, before he proceeds to execute the duties of his office, take an oath in the following form, to wit "I, AB, do solemnly swear that I will support the Constitution of the United States."

1) Support: To aid the cause of by approving, favoring or advocating. To keep from failing or yielding during stress.

(200) Public Office: A position whose occupant has legal authority to exercise a governments sovereign powers for a fixed period.

1) When one takes upon himself the duties of a public office, he becomes not only responsible to the public for their faithful performance, but may be liable to individuals for any injury resulting from his actions or omissions. In order to impress upon his mind the obligations that he assumes, he is required, before entering upon his official duties, to promise in the most solemn manner known to the law, that he will support the Constitution of the United States and that he will faithfully discharge the duties of his office to the best of his abilities.

This is supposed to be binding to his conscience and every willful violation of his official duty whereby the public or individuals maybe injured, partakes of the nature of a public offense.



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(201) Nonfeasance: The failure to act when a duty to act exists.

1) There is a difference in the Law of negligence between misfeasance and nonfeasance - that is to say, between active misconduct working positive injury to others and passive inaction or a failure to take steps to protect them from harm.

(202) Prosecutorial Misconduct: A prosecutors improper or illegal act (or failure to act), especially involving an attempt to avoid required disclosure or to persuade the jury to wrongly convict a defendant or assess an unjustified punishment.

(203) Berger v. United States - 295 U.S. 78, 88 (1935)

"The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation is to govern impartially, is as compelling as its obligation to govern at all and whose interest therefore, in a criminal prosecution is not that it should win a case, but that Justice shall be done."

"A prosecutor is in a peculiar and very definite sense the Servant of the Law, the twofold aim of which is that guilt shall not escape or innocence shall suffer. He may prosecute with earnestness and vigor - indeed she shall do so. But while She may strike hard blows, She is not at liberty to strike foul ones." (Rough Ones)

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(204) Forgery: The act of fraudulently making a false document or altering a real one to be used as if genuine by someone with the intent to deceive.

(205) Seditious Conspiracy: A criminal conspiracy to 1) overthrow or destroy the U.S. government, 2) oppose its authority, 3) prevent the execution of its laws, or 4) seize or possess its property

1) Title 18 U.S.C. § 2384

(206) Agent: Something that produces an effect. Someone who is authorized to act for or in place of another; a representative.

(207) Sedition: A agreement, communication or other preliminary activity aimed at inciting treason or some lesser commotion against public authority.

1) Sedition is defined as the speaking or writting of words calculated to excite disaffection against the Constitution as by law established, to procure the alteration of it by other than lawful means.

(208) The Bill of Rights gives assurance to the individual of the preservation of his liberty. The freedom that is in the upper most mind of men is the freedom of body. No one is to be tortured or imprisoned at the mere pleasure of the ruler. An individual may not be

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singled out from among his fellows and made the victim of the shafts of malice.

## (209) The Doctrine of Master/Servant and Principal/Agent

"A servant is employed to perform mechanical or operative acts for his master. While so engaged, he may negligently or willfully injure third persons. In such cases, it is held that the master is liable for every wrong committed by the servant in the course of the employment and for the master's benefit. And it is immaterial whether the master authorized or directed the act."

"Contract<sup>①</sup> is the chief subject matter of the Law of principal and agent because an agent<sup>③</sup> is employed mainly to influence third persons<sup>②</sup> to enter into new legal relations with the principal<sup>④</sup>."

① Conviction is a CONTRACT (New legal relation)

② Third person is defined as "ME"

③ Judges are AGENT's of the State

④ States are the PRINCIPAL's to the judges

(210) Suppression of Evidence: The destruction of evidence or the refusal to give evidence at a criminal proceeding. The prosecutions withholding of evidence favorable to the defendant. (Obstruction of Justice)

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(211) Misprison of Felony: Concealment or nondisclosure of someone else's felony.

1) Misprison of Treason and Misprison of Felony consist of the criminal default of one in regard to the crime of another.

2) Title 18 U.S.C. § 4

(212) Tampering: The act of altering a thing, especially the act of illegally altering a document or product, such as written evidence.

1) Tampering with a witness or jury is a criminal offense - Title 18 U.S.C. § 1365, Title 42 U.S.C. § 1985

(213) Fraud of the Court: A lawyer or parties misconduct so serious that it undermines or is intended to undermine the integrity of the proceeding. An example is the introduction of fabricated evidence.

(214) Malicious Injury: An injury resulting from a willful act committed with knowledge that it is likely to injure another or with reckless disregard of the consequences.

(215) Miscarriage of Justice: A grossly unfair outcome in a judicial proceeding, as when a defendant is convicted despite a lack of evidence on an essential element of a crime.



S-55

(216) Culpable: Involving the breach of a duty.

1) Except in cases of absolute liability, criminal culpability under the Model Penal Code requires proof that the defendant "acted purposely, knowingly, recklessly, or negligently, as the law may require, with respect to each material element of the offense."

(217) Almost the only knowledge of law possessed by many people is that ignorance of it is no excuse. The rule is that whereas ignorance of fact can excuse, to the extent that it negates "mens rea" or fault, ignorance of the Law does not.

(218) Thomas Jefferson - Sober Sense of the People

"It was by the sober sense of our citizens that we were safely and steadily conducted from monarchy to republicanism and it is by the same agency alone we can be kept from falling back."

(219) Thomas Jefferson - The Sacred Principle

"Bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, by which equal law must protect and to violate would be oppression. Let us then, fellow citizens, unite with one heart and one mind."

S-56

(220) Ronald Reagan - Love Our Country

"How can we love our country and not love our countrymen? And loving them, reaching out a hand when they fall, heal them when they are sick and provide opportunities to make them self-sufficient so they will be equal in fact and not just in theory."

(221) Patriot: One who loves and defends his country.

Patriotism is a dialogue with your fellow citizens and a larger world about not only what you love about your country but also how it can be improved. Unchecked nationalism leads to conflict and war. Unbridled patriotism can lead to the betterment of society. Patriotism is rooted in humanity. Nationalism is rooted in arrogance.

(222) Elie Wiesel - I swore to never be silent

"I swore never to be silent whenever and wherever human beings endure suffering and humiliation. We must take sides. Neutrality helps the oppressor, never the oppressed. Silence encourages the tormentor, never the tormented. Sometimes we must interfere."

S-57

(223) Abraham Lincoln - Great Deeds / Great Power

"To do great deeds, great power is essential. There are a few of us, who have latched on to this silly idea that we can change the world. We will develop the power to ignore what is popular and do what is right. One person can attain the power to lead hundreds of thousands of people to the promised land of their dreams."

(224) George Washington - First Inaugural Address

"No people can be bound to acknowledge and adore the Invisible Hand which conducts the affairs of men more than those of the United States. The propitious smiles of Heaven can never be expected on a nation that disregards the eternal rules of order and right which Heaven itself has ordained and since the preservation of the sacred fire of liberty and the destiny of the republican model of government are justly considered, perhaps, as deeply, as finally, staked on the experiment intrusted to the hands of the American people."

(225) Faith: Trust that a promise will be carried out. Allegiance or loyalty to a person or to a duty.

(226) Justice: The fair treatment of people. The quality of being fair and reasonable. The fair and proper administration of laws.

S-58

1) Law cannot be divorced from morality as far as it clearly contains the notion of right to which the moral quality of justice corresponds.

(227) Duty to Act: A duty to take some action to prevent harm to another and for the failure of which one may be liable depending on the relationship of the parties.

1) Deliberate Indifference: Conscious disregard of the harm that one's actions could do to the interests or rights of others.

2) Extreme Indifference: Excessive disregard for the known risks of harm to another person's life, body or property.

(228) Article I. Section 12. - WA State constitution

"No law shall be passed granting to any citizen, class of citizens, or corporation other than municipal, privileges or immunities which upon the same terms shall not equally belong to all citizens or corporations."

1) The judges claims that he and the prosecutor are "immune" and "sovereign" are in violation of both federal and state statutes.

2) Are not your crimes perpetrated against me, not equal to the allegations of the very same crimes perpetrated by me?



S-59

(229) Article I. Section 22. - WA State constitution

"In criminal prosecutions the accused shall have the right to testify in his own behalf, to meet the witnesses against him face to face."

1) I had the right to testify on my own behalf.

2) I had the right to present evidence in my defense.

3) I had the right to confront my accusers.

(230) EPICITUS - Rough Antagonist

"Whenever you find yourself in a tight place, remember that God has pitted you against a rough antagonist, so you can become a conqueror."

(231) Thomas Jefferson - First Inaugural Address

"The freedom of religion, freedom of press, freedom of persons under the protection of the Habeas Corpus and trial by juries impartially selected. These principles form the bright constellation which has gone before us and guided our steps through an age of revolution and reformation. The wisdom of our sages and blood of our heroes have been devoted to their attainment. They should be the creed of our political faith and should we wander from them in moments of error, let us hasten to retrace our steps to regain the road that leads to peace and liberty."

LI-0

Letter of Introduction

LI-1~LI-6-- Letter of Introduction

LI-1

To whom it may concern,

Two hundred and forty-two years ago, a great and powerful nation was established, through the faith and fury of God, in defiance to acts of oppression and abuse, which are contrary to the natural fruits of freedom. As a result, great men arose, awake to a new vision, a free one, where all citizens are bestowed certain unalienable rights, from and by our Creator. Life, liberty and the pursuit of happiness are not simply terms that are extended to the wealthy, they are not table scraps which are fought for, as they fall from the table of the successful, NO! They are freedoms that are bestowed to all, regardless of age, race, wealth, intelligence or history. It's the ability to visualize a dream of one's future and the power to then manifest such a dream. Success and failure is upon the individual and not the government, limitations come simply from a person's inability to dream, or the sins of oppression.

Today, we call these men great, hero's, forefather's and Patriots and they have become symbols of our pride and aspirations. George Washington, Thomas Jefferson, James Madison and so many more who are worthy of our mention and obliged to our eternal gratitude. But the story could so easily have been different, for before these great men were called Patriots, they were called rebels, criminals and tyrants. Their vision was dismissed and their cause was laughed at. But they knew something that no one else did; they had a power that none of their enemies

LI-2

understood. It was the power of God and Truth. Indeed, our nation was founded by rebels and today, by delivery of this notice, and the presentation of irrefutable, reasonable, sound, just and clear violations of the rights bestowed upon us by the United States Constitution and as designed by our Creator, new rebels have now emerged. But not to destroy a nation, instead to work together to bring about positive change and correct the flaws in our foundation so that no more will justice not prevail, no more will the innocent be punished, that we will return to the roots of our nations freedoms and the source of our once great hope: that God Almighty is the only true and righteous judge and that in His glory and in His power, guilt and innocence can be ascertained.

The petitioners included in this written allegation are not only witnesses to these atrocities, but each and every single one of them have also been victim to them many times, but we are all very proud to claim that the blood of those rebels who fought to earn our freedoms 242 years ago, is the very same blood running through all of our veins. So you can call us rebels, you can call us criminals, history however, will call us Patriots!

United we stand but divided we fall. A great division has been placed across this nation, weakening our greatness and threatening our very existence. Am I not your brother? Has God not commanded your forgiveness and His vengeance? Is not your crimes perpetrated against me not equal to the allegations of the very same crimes



LI-3

perpetrated by me? How can one claim the right and ability to judge me for an action to which the judge himself holds more guilt, yet refuses to cleanse himself first? My brother, first remove the plank in your own eye and then you will see clearly to remove the speck in my eye. You say that you want to judge, seek first judgement of your own house and then you will be qualified to help cleanse mine.

With great power comes great responsibility, what is easy is not necessarily what is right and what is right can sometimes seem wrong, but with God, all things are possible and with the Law, the correct path is now illuminated. This path will not be easy, there will be much work demanded and many apologies will have to be offered, which will take much courage, but where courage and it's product transpires, strength will inversely come. That strength is the image of forgiveness and not vengeance, the strength to heal a divided nation because of the glorious gift of a new life that God has given to U.S. To no longer be bound by the sins of our past and accept the freedom of our futures. To truly be able to turn away from our old sinful lives because sin no longer has it's hold on us is precisely the recepie that God has prepared in order for the courage and the strength needed to produce this amazing future for our country to now come about.

Change does not come without reason. Reason does not come without wisdom and wisdom does not come without

LI-4

mistakes. For a tree to grow, a seed must first die. The roots of tyranny and oppression can amass great evils. From those evils can come, the condemnation of the innocent, the defamation of a good name, the confiscation of property or the alienation and destruction of a family. We have been told the Truth and the Way to overcome evil from the ruler and Creator of all; you overcome evil with good and you never repay evil for it's evil. So I implore you, with the greatest convictions that I can muster, grab hold of the weeds that are destroying our nation, take them by the roots of their evil and let's extract them from our great nation!

We who are free, can only boast in the freedoms that are real and not an illusion. We are each only as free as the freedoms that are extended to all and not simply some. Any time a freedom is demanded or stolen from one, through justification, or ignorance, that freedom and right is lost to all and not simply the target of scorn and punishment. Any freedom which can be removed from one, can be removed from all and is no longer a freedom, but an illusion of freedom. Evil shows no favoritism, when evil is given birth, it becomes a thief and once a thief, we all must bear the consequences of it's evil thievery.

Vengeance solves nothing, casting blame fails to grasp the greater message and our mutual hope should be reconciliation. Not just with each other, but with the faith in the source of our nation's foundation. We are a nation of Laws and those Laws are essential to maintaining

LI-5

order and peace. But more importantly, we are a nation founded on faith. We must return to the faith of our designed system. A system that, sometimes a guilty person may appear to be set free, but more importantly, a system that if utilized properly, innocent people will not be punished. Today, as of this moment, I can tell you and I bear my own witness testimony and as God is my witness as well, innocent people are being punished because the system is broken and it is never acceptable, not in any Country, state, city or household, for an innocent person to be wrongfully or illegally imprisoned.

Ignorance is not a defense, simply because you don't understand the Laws of Gravity, or believe in the Laws of God, does not mean that your not bound by them. Lack of knowledge, resulting in a violation, does not eliminate you from the ramifications of such violations. The illegal and highly destructive acts perpetrated by the Justice System, although I do not believe were intentional or malicious, does not negate their existence. Crimes done in secret and in the dark are still crimes and justice still deserves to be rendered however, as the Petitioner, I bear great responsibility in that, "God desires mercy and not sacrifice," therefore, peaceful resolution and mercy for your ignorance I offer to you.

In closing, as our brother James told us in his letter, "It is sin to know what you ought to do and then choose to not do it." Everyone makes mistakes, no one is perfect, but the difference between average and great, a sheep and



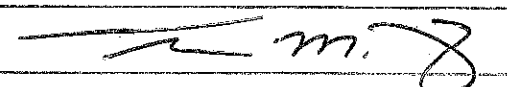
LI-6

a lion, is the ability to produce wisdom from one's mistakes. Everyone falls down, but only fools fail to stand back up. A repentant sinner is always forgiven when the repentance is sincere and a new course is chartered, but woe to anyone who in their pride and arrogance, remains blind and cannot feel sorrow and compassion for the destruction that they, themselves have caused. May God in His righteous judgement have mercy on such souls.

This letter has been prepared in the writting of my own hand, but the devistation exists through the lives and painful experiences of each and every single member of the attached petitioner list. NOT 1 person, NOT 1 marriage, NOT 1 family, NOT 1 household, NOT 1 city, NOT 1 state can claim that the violations of the rights, presented and proven within the arguement presented, has not effected them somewhere and in some way of their lives.

When freedom is robbed from those who are free, truly I tell you that everyone pays for it, whether they realize it or not.

Respectfully & Peacefully  
a Servant of Justice,

  
Tanawah M. Downing



M-0

## Motion's

M1-1 ~ M1-3 -- Motion to Compel for Information

M2-1 ~ M2-3 -- Motion for Summary Judgment

SL-1 ~ SL-12 -- Supplement to Motion for Summary Judgment

X-1 ~ X-18 -- Supplemental Data to SL-1 ~ SL-12

MI-1

United States District Court  
Eastern District of Washington, Spokane

Tanawah M. Downing  
Petitioner

Case No.:

V.

Jeffrey A. Uttecht  
Respondent

Motion to Compel for  
Information (Show Cause)

Petitioner respectfully submits to the court this Motion to Compel for Information (Show Cause).

Petitioner has submitted a Writ of Habeas Corpus<sup>(150)</sup> pursuant to Title 28 U.S.C. § 2254. The right to challenge<sup>(151)</sup> an unlawful detention by Writ of Habeas Corpus<sup>(152)</sup> is guaranteed by the United States Constitution. (Article I. Section 9.)<sup>(153)</sup>

It is alleged that the Petitioners federally conferred Constitutional rights have been violated by the State of Washington, therefore, Petitioner asks the court to order Respondent to present the Bill of Indictment by a Grand Jury causing the order of Petitioners arrest and detainment<sup>(154)</sup> in accordance with the 5<sup>TH</sup> Amendment of the United States Constitution and the Laws of the United States.<sup>(155)</sup> If the Respondent cannot provide the legal cause for Petitioners restraint, Petitioner ask the court to order his immediate release from confinement. Because detaining a person in the absence of any legal authority to do so is illegal detention,<sup>(157)</sup> Petitioner is entitled to the immediate release<sup>(156)</sup>

M1-2

from confinement.<sup>(158)</sup> This Writ of Habeas Corpus is an original civil action, it is not an appeal or mechanism requesting federal review of Petitioners judgment of conviction, therefore, the right to proceed may not be conditioned upon the exhaustion of any other remedy. If Respondent cannot provide the legal cause for Petitioners arrest and detainment, as stipulated by the 5<sup>TH</sup> Amendment to the United States Constitution, then the "fruits"<sup>(159)</sup> obtained by the unconstitutional arrest and charge (i.e. Conviction, Sentence and Imprisonment) are all also rendered unconstitutional, as they are tainted by the illegality of the way<sup>(160)</sup> in which they were obtained.<sup>(161)</sup>

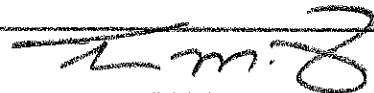
In accordance with Amendment XIV to the United States Constitution, Petitioner is a Citizen of the United States and of the state in which the Petitioner resides. Under the Laws of the United States Constitution, Petitioner is entitled to an indictment by a Grand Jury before being held to answer for an infamous crime. The State of Washington undeniably violated that right the moment that Petitioner was held to answer for an infamous crime without an indictment by a Grand Jury.<sup>(162)</sup> Petitioner has not and will not relinquish his United States Citizen rights regardless of where within the jurisdictional United States he chooses to reside. Furthermore, Petitioner cannot be denied his United States Citizenship rights by any regional or local governments subject to the authority and jurisdiction of the United States of America.

MI-3

To be clear, Petitioner is not attempting to change the laws, rather pointing out what the laws state and that the ways in which they are being enforced directly contradict with what is specified. Therefore, Petitioner is not trying to change the laws, rather asking that the laws be upheld. If the laws state that something will be done, in a certain way, then we must follow that way. Laws do not change arbitrarily, that is tyranny.<sup>(103)</sup> Constitutionalism demands that the laws evolve only through suffrage, therefore it is up to the people to decide whether or not the United States Constitution applied to them and not a judge or a state.<sup>(104)</sup>

Petitioner respectfully requests that the court proceed in a summary way to determine the cause of the restraint and to take immediate and appropriate action in the absence of legal cause for his arrest and detention.

Thank you for your time & consideration,



Tanawah M. Downing  
Petitioner, Pro Se



M2-1

United States District Court  
Eastern District of Washington, Spokane

Tanawah M. Downing  
Petitioner

Case No.:

V.

Jeffrey A. Uttecht  
Respondent

Motion for Petitioner-Initiated  
Summary Judgment

Petitioner asks the court to proceed in summary judgment for the Petitioner, in accordance with Title 28 U.S.C. § 17.3 - Petitioner Initiated Summary Proceedings, as "The facts are undisputed and establish a denial of Petitioners Constitutional rights." (Walker v. Johnston, 312 U.S. 275, 284)  
A petitioner initiated summary judgment motion is appropriate when: The facial constitutionality of a state statute is at stake and the provisions or practices application in the particular case is not in dispute.

Article I, Section 26. of the Washington State Constitution is facially unconstitutional, in that it always functions contrary to the clear and unambiguous provision of the 5<sup>th</sup> Amendment to the United States Constitution and the Respondent failed to provide the legal cause for Petitioners arrest and detainment as requested in Petitioners Motion to Show Cause. Instead, Respondent provided legal cause for Petitioners imprisonment. A judgment and sentence is not a legal cause for an arrest.

M2-2

Therefore, there is no dispute of the application of the unconstitutional provision in Petitioners case. The 5<sup>TH</sup> Amendment to the United States Constitution clearly and unambiguously states, "No person shall be held to answer for a capital or otherwise infamous crime unless on the presentment or indictment of a Grand Jury."

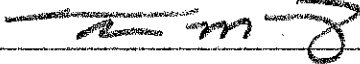
Petitioner was arrested, charged and held to answer for an infamous crime, under the color of state law, in violation of the provisions of the United States Constitution and the Laws of the United States, therefore, Petitioner is entitled to immediate relief from his unlawful detention. The State of Washington has a duty to protect Constitutional rights, under Constitutional Law §171 - Duty of State Courts to Protect Constitutional Rights, "State courts, equally with federal courts, are under obligation to guard and enforce every right secured by the federal Constitution" and also O'Sullivan v. Boerckel, 526 U.S. 838, 844 "State courts, like federal courts are obliged to enforce federal law." That duty was undeniably breached when the State of Washington established and began enforcing Article I. Section 26. of it's constitution.

As a result of the States breach of duty, Petitioner has a corresponding right which has been violated under the color of state law. In accordance with Title 28 U.S.C. § 1981 - Equal Rights Under the Law, "All persons within

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M2-3

the jurisdiction of the United States shall have the same right in every state to the full and equal benefit of all laws and proceedings." Original jurisdiction of this civil action resides with the district courts, as directed by Title 28 U.S.C. § 1343 - Civil Rights and Elective Franchise, "The district court shall have original jurisdiction of any civil action authorized by law to be commenced by any person." This law is prescribed to redress the deprivation, under the color of any state law, of any right secured by the Constitution of the United States providing for equal rights of all persons within the jurisdiction of the United States.

Respectfully & Peacefully,  
a Servant of Justice,  


Tanawah M. Downing  
Petitioner, Pro Se

SL-1

United States District Court  
Eastern District of Washington, Spokane

Tanawah M. Downing  
Petitioner

Case No.:

v.  
Jeffrey A. Uttecht  
Respondent

Supplement to Motion for  
Petitioner Initiated Summary  
Judgment

Petitioner respectfully submits to the court for consideration, this Supplement to Motion for Petitioner Initiated Summary Judgment.

Petitioner has submitted a Writ of Habeas Corpus pursuant to Title 28 U.S.C. § 2254. This Writ of Habeas Corpus is an original civil action challenging the Constitutionality of Article I, Section 26. of the Washington State constitution<sup>②</sup>, which is directly and facially unconstitutional<sup>③</sup>, as well as deprives the Petitioner of equal rights and equal protection under the Law<sup>④</sup>, as a United States Citizen<sup>⑦</sup>, in violation of the United States Constitution and Title 42 U.S.C. § 1981. Therefore, this matter is clearly controlled under the provisions of Title 28 U.S.C. § 1343<sup>⑧</sup>, as a civil rights<sup>④</sup> violation and the district court has original jurisdiction<sup>⑩</sup>, as prescribed by Law. As a result, this court has a statutory obligation to rule on this petition first and before any other courts, including the courts of Washington State. Refusal to act<sup>⑪</sup> and fulfill this obligation<sup>⑫</sup> will constitute a willful disregard<sup>⑬</sup> of the Petitioners corresponding right to receive the fruits of the obligation. In



SL-2

accordance with Title 28 U.S.C. § 2254 (b)(1)(B)(i)(5)(f), the Law is in agreement, as the state has in place a statute, which expressly forecloses relief on the merits of the Petitioners procedural situation. This Ineffective Corrective Process, by way of Statutory Exemption to the exhaustion of state remedies requirement agrees with Title 28 U.S.C. § 1343 and Title 28 U.S.C. § 1331 and confirms the district courts duty to act and rule on this petition FIRST and before any other court, including the courts of the State of Washington.

Refusal of this court to fulfill the statutory obligation<sup>(14)</sup> imposed by Law,<sup>(15)</sup> after being clearly informed and made aware<sup>(16)</sup> of the duty, would be gross negligence<sup>(17)</sup> and wanton misconduct,<sup>(18)</sup> of which Petitioner would be entitled to any and all civil,<sup>(19)</sup> criminal<sup>(20)</sup> and/or financial recovery for the damages<sup>(21)</sup> and transgression of Law<sup>(22)</sup> resulting from the judges<sup>(23)</sup> and courts breach of legal duties. Duties that are defined affirmatively and applied statutorily are not discretionary.<sup>(24)</sup>

The courts duty to act is imposed by positive, affirmative statute<sup>(25)</sup> therefore, it is not discretionary.<sup>(26)</sup> Any attempt to dismiss or evade the duty imposed by Positive Law will be a Willful, knowledgable and reckless disregard of the Petitioners rights<sup>(27)</sup> and the Laws of the United States.

The Attorney General of Washington has stated numerous times that, "Hurtado has been the law of the land for over a century," which is preposterous and condescending to the true roots of our nations freedoms and origin. I don't recall a single brave American warrior, myself included, who sacrificed his life for the

SL-3

"cause of Hurtado" or the desecration of the Freedoms we Americans have been told that we enjoy. I do however, know that the United States Constitution has been the "Supreme Law of the Land"<sup>(28)</sup> for almost two and a half centuries. I know over 300 million Americans who look up to it every day for their lives and sustenance. I know countless myriads of lives lost, battles fought and peace progressed all in the name of Truth and Justice, yet the Attorney General cavalierly throws our nations foundation to the side smuggly, in order to promote and progress "Hurtado" as the law of the land. Shame on him and shame on the state! But in the name of Justice<sup>(29)</sup> and the light of Patriotism,<sup>(30)</sup> I forgive him for his blindness and I welcome the state back to the path of prosperity.<sup>(31)</sup>

The numerous references to case law<sup>(32)</sup>, such as "Hurtado" and "Gaines" as "laws" sufficiently able to deprive United States Citizens of their guaranteed rights secured by the United States Constitution<sup>(3)</sup> is fundamentally flawed, as judges don't make laws, they make rulings.<sup>(3)</sup> Law makers make laws and law makers didn't make "Hurtado" or "Gaines". The separation of powers<sup>(33)</sup> exists in order to prevent a despotic or tyrannical government from ruling,<sup>(4)</sup> as anyone serving in public office in the United States should be aware. Law makers did however, make the United States Constitution and Title 28 U.S.C. § 1343. Rulings<sup>(34)</sup> are not laws and laws are not changed by rulings.<sup>(5)</sup> Laws are made only in accordance

SL-4

with the methods and manners prescribed by the United States Constitution, by persons<sup>(35)</sup>, or bodys of persons legally constituted to do so, therefore, "Hurtado" and "Gaines" are not laws and have no validity or enforcability due to their unconstitutionality.<sup>(3)</sup>

The state and court has referred to Hurtado v. California, 110 U.S. 516 (1884) as representative case law for this petition, including the claims that "an indictment is not essential to due process of law under the Fourteenth Amendment," and "Indictment by grand jury is not part of the due process guarantees of the Fourteenth Amendment." While it is true that the Fourteenth Amendment does possess a due process clause<sup>(37)</sup>, which may have been erroneously addressed by the Hurtado ruling, it also possesses three other clauses. Petitioner is not applying the due process clause of the Fourteenth Amendment to this legal arguement. Petitioner is applying the priviledges and immunities clause<sup>(38)</sup> of the Fourteenth Amendment<sup>(40)</sup> to this petition, as clearly stated in Ground Four of the Writ of Habeas Corpus. Indictment by a grand jury is part of the United States Citizenship rights guaranteed by the Bill of Rights<sup>(41)</sup> and thus preserved by the guarantees of the priviledges and immunities clause of the Fourteenth Amendment. Therefore, Hurtado v. California and all of its progeny including, Gaines v. State of Washington, fail to accurately represent the Petitioners claims and as a result, are not cases worthy of representation, as they address a different



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legal rationale than what has been brought before this court in the current petition. Again, this is an equal rights and equal protection claim, therefore, it must withstand Strict Scrutiny<sup>(42)</sup> and the application of any other measure would be an abuse of discretion<sup>(43)</sup>. This is a direct, systemic discrimination of a fundamental Constitutional right<sup>(44)</sup> for a suspect classification<sup>(45)</sup> under the color of state law<sup>(46)</sup>, in violation of the United States Constitution therefore, the Compelling-State-Interest Test must be applied<sup>(47)</sup>. Unfortunately, there is no claim that the state can make which would necessitate the unconstitutional provision of its inferior state constitution. This is simply a situation in which the state is imposing its will upon the nation, in violation of Federation, through the willful defiance of the procedures and processes put forth by the United States Constitution, as enacted by the People of the United States of America.<sup>(48)</sup>

The court seems to be implying that state prisoners<sup>(49)</sup> are not "persons" in its refusal to apply the provisions of Title 28 U.S.C. §1343, because the Law clearly states, "The district courts shall have original jurisdiction of any civil action<sup>(50)</sup> authorized by law to be commenced by any person." Such a claim is eerily similar to one previously made by the judiciary in Plessy v. Ferguson, in which the court claimed that black people are not people and therefore, are not entitled to civil rights or the protection of the United States Constitution. Of course, we know in hindsight how incredibly destructive and



SL-6

unconstitutional that ruling was to America and to American Citizens. Indeed, our country has made many mistakes, but I am proud to know that we have resolved to learn from each of them, in order to be better and stronger as a result of them.

We know that the question of "peoplehood," which mitigated the atrocities of Plessy v. Ferguson, was addressed by the United States Supreme Court in Brown v. Board of Education, whereby the Court identified 4 elements that define a person, as follows:

- 1) Self Awareness,
- 2) Member of a Community,
- 3) Establish Social Relation within the Community, and
- 4) Ability to own property & Posses legal Responsibility

It goes without saying that a state prisoner is a person and meets all the criteria of "personhood," as defined by the United States Supreme Court, therefore, any argument that state prisoners are not entitled to protection under the Civil Rights statute<sup>(70)</sup>, Title 28 U.S.C. § 1343, is erroneous.<sup>(4)</sup> Furthermore, in accordance with the Civil Rights Act of 1964,<sup>(51)</sup> the civil rights of "a person convicted of a crime," be it a felony or a misdemeanor, are in nowise affected or diminished except insofar as express statutory provisions so prescribe.<sup>(70)</sup> Civil rights especially include, the right to vote, the right of due process

SL-7

and the right of equal protection under the Law. Since Title 28 U.S.C. § 1343 makes no reference within the statute depriving state prisoners of its protection<sup>(52)</sup>, any denial of its application to state prisoners is a violation of the Law as well as a deprivation of a right provided by an Act of Congress<sup>(53)</sup> providing for equal rights of all persons within the jurisdiction of the United States. Judges make rulings and Law Makers make Laws. Judges have no legal authority to change positive laws<sup>(54)</sup> enacted by the People, therefore, any ruling made that is contrary<sup>(55)</sup> to the clear prescriptions of the written laws<sup>(56)</sup> is unlawful and therefore, no law at all.<sup>(1)(2)(3)</sup>

The Law does not provide for its deprivation to any person, or class of persons<sup>(57)</sup>, including state prisoners. As a result, this court must rule on this petition FIRST and before any other court, including the courts of the State of Washington. This court is legally bound to provide the full and equal benefits of all laws and proceedings to all persons within the jurisdiction of the United States, regardless of what state they reside, in accordance with Title 42 U.S.C. § 1981<sup>(58)</sup>. Prisoners are people and people cannot be deprived of equal rights under the law or equal protection of the law.

The state claims, "The non-retroactivity doctrine of Teague v. Lane, (1989) 489 U.S. 288 bars granting relief because the claims are not based upon clearly established law and would require the announcement and application

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of a new rule. "The Constitution of the United States is based upon Egalitarianism, which is the belief that all people are equal and should have the same rights and opportunities in life and demands the removal of all inequalities among people, therefore, all American Constitutional Law is founded upon equal rights and equal protection principles. Any claims contrary to these theories are unconstitutional, so the states "Teague" argument is completely and utterly without merit, has no validity what so ever and is, by its very nature, seditious.

Equal rights under the law and equal protection of the law are very well known and established laws. Therefore, the inverse to the States "Teague" argument is actually true, in that, the deprivation of equal rights and equal protection of the law is NOT clearly established law and contrary to all the principles of Constitutionalism. As a result, relief is not barred, rather demanded. Granting relief is the only way of upholding the laws and principles held most sacred to Americans by American Laws.

I am ashamed to know that the elected and appointed leaders of the State of Washington can claim that an obscure, unconstitutional, judge-made ruling from 1884 is more clearly established law than those enacted following the victories of the Revolutionary and Civil Wars, as well as the Civil Rights movement of the 1950's and 1960's. I'm appalled at the states ingratitude for the sacrifices of great Americans such as Dr. Martin Luther King, President Abraham Lincoln



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and so many more who gave everything they had, including their lives, in the battle for equality. For a state claiming to be progressive and cognizant of the plight of humanity, it is disturbingly regressive<sup>(65)</sup> in its understanding of our nations history, the application of our nations Laws and its role in the governing of our nations people.<sup>(66)</sup>

The following are just a few of the numerous Laws and principles which clearly establish Equal Rights under the Law and Equal Protection of the Law:

- 1) The Declaration of Independence, "We hold these truths to be self evident, that all men are created equal...."
- 2) Equal Protection Clause - 14<sup>TH</sup> Amendment, "No state shall make or enforce any law that denies any person within its jurisdiction the equal protection of the law."
- 3) Privileges and Immunities Clause - 14<sup>TH</sup> Amendment, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States."
- 4) Comity Clause - Article IV. Section 2, "The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States."
- 5) Title 28 U.S.C. § 1343 - Civil Rights and Elective Franchises
- 6) Title 42 U.S.C. § 1981 - Equal Rights under the Law
- 7) The Civil Rights Act of 1964
- 8) The Civil Rights Act of 1968
- 9) Constitutional Law § 171 - Duty to Protect and Enforce Rights



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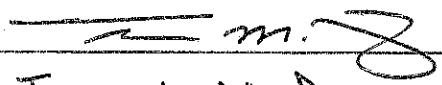
- 10) Plessy v. Ferguson - Justice John Marshal Harlan, "Our Constitution is color-blind and neither knows, nor tolerates classes among citizens. In respect to civil rights, all citizens are equal before the Law."
- 11) Civil Right: Civil rights include especially, the right to vote, the right of due process and the right of equal protection under the law. Equal protection of laws is invariably treated as a substantive Constitutional principle which demands that laws will only be legitimate if they can be described as just and equal.
- 12) Article I, Section 12. - WA State constitution, "No law shall be passed granting to any citizen, class of citizens, or corporation, other than munipale, privileges or immunities which upon the same terms shall not equally belong to all citizens."
- 13) James Madison - The Federalist, "Measures are too often decided, not according to the rules of justice and the rights of the minor party, but by the superior force of an interested and overbearing majority."
- 14) Abraham Lincoln - The Harbinger, "These lines were applicable to all men and at all times, a rebuke and a stumbling block to the very harbingers of reappearing tyranny and oppression."
- 15) Thomas Jefferson - The Sacred Principle, "Bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority posses their equal rights, by which equal law

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must protect and to violate would be oppression."

16) Are not your crimes perpetrated against me, not EQUAL to the allegations of the very same crimes perpetrated by me?

We must all understand that tyranny<sup>(67)</sup> and oppression<sup>(68)</sup> are the enemies of Constitutionalism and when we abuse the powers that we are given, in order to offend the very object which affords us our powers, we become an enemy of that object and its wrath is unavoidable. Rebellion to tyranny is obedience to God. Rebellion is always rebellion, except when it is in defense of the Gospel. Tyranny and oppression are the most fundamental violations of the Good News. I implore you, with the greatest convictions that I can muster, grab hold of the weeds that are destroying our nation, take them by the roots of their evil and let's extract them from our Great Nation! Do the right thing, discharge the duties of your office;<sup>(69)</sup> stand for the People and not the enemy.

Respectfully & Peacefully  
a Servant of Justice,  
  
Tanawah M. Downing  
Petitioner, Pro Se

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I hereby certify that on \_\_\_\_\_, I  
uploaded the foregoing document to the court through  
the law library at Coyote Ridge Correctional Center.

Respectfully & Peacefully,  
T.M.  
Tanawah M. Downing  
Petitioner, Pro Se

① Marbury v. Madison, 5 U.S. 137, 174, 176 (1803)

"All laws which are repugnant to the Constitution are null and void."

② 16 Am Jur 2d., Sec 177- late 2d., Sec 256

"The general rule is that an unconstitutional statute, though having the form and name of law, is in reality no law, but is wholly void and ineffective for any purpose; since unconstitutionality dates from the time of its enactment and not merely from the date of the decision so branding it. No one is bound to obey an unconstitutional law and no courts are bound to enforce it."

③ Norton v. Shelby County, 118 U.S. 425 p. 442

"An unconstitutional act is not law; it confers no rights; it imposes no duties; affords no protection; it creates no office; it is in legal contemplation, as inoperative as though it had never been passed."

④ Thomas Jefferson - Judiciary might Destroy our Rights

"It will render powerless the checks provided of one government on another and will become as venal and oppressive as the government from which we separated."

"The opinion which gives judges the right to decide what laws is constitutional and what not, not only for themselves in their own



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sphere of action, but for the legislation and executive also in their spheres, would make the judiciary a despotic branch... Judges should be withdrawn from the bench whose erroneous biases are leading to dissolution. It may, indeed, injure them in fame or fortune, but it saves the Republic."

⑤ Miranda v. Arizona, 384 U.S. 436; 86 S.Ct. 1602; 16 L.Ed. 2d 694 (1966)

"Where rights secured by the Constitution are involved there can be no RULE making or legislation which would abrogate them."

1) RULES don't have the authority to violate what the PEOPLE constituted.

⑥ Equitable: Just; consistent with principles of justice and right.

1) The concept of "inalienable rights" reflect the influence of equity on the Declaration of Independence.

⑦ Citizen: Someone who, by either birth or naturalization, is a member of a political community, owing allegiance to the community and being entitled to enjoy all its civil rights and privileges.

⑧ Redress: Relief; remedy. A means of seeking relief or remedy.

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⑨ Civil Right: Any of the individual rights of personal liberty guaranteed by the Bill of Rights and by the 13<sup>th</sup>, 14<sup>th</sup>, 15<sup>th</sup>, and 19<sup>th</sup> Amendments to the Constitution.

1) Civil Rights include especially the right to vote, the right of due process and the right of equal protection under the Law.

2) Equal Protection of laws is invariably treated as a substantive Constitutional principle which demands that laws will only be legitimate if they can be described as just and equal.

⑩ Conflict of Laws: A difference between the laws of different states or countries in a case which a transaction or occurrence central to the case has a connection to two or more jurisdictions.

1) The body of jurisprudence that undertakes to reconcile such differences or to decide what law is to be right to govern.

⑪ Misconduct: A dereliction of duty; unlawful, dishonest, or improper behavior, especially by someone in a position of authority or trust.

1) Dereliction of Duty: A deliberate or accidental failure to do what should be done, especially as part of one's job.

⑫ Obligation: A legal or moral duty to do or not do something. To make someone have to do something because it is law or has become that persons duty.

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1) Looked at from the point of view of the person entitled, an obligation is a right; looked at from the point of view of the person bound; it is a duty.

2) It refers to anything that a person is bound to do or forbear from doing, whether the duty is imposed by law, contract, promise, social relations, courtesy, kindness or morality.

3) "The judges in every state shall be bound thereby any Thing in the Constitution or laws of any state to the Contrary notwithstanding."

(13) Malice: Reckless disregard of the law or of a person's legal rights.

1) Malice means in law, wrongful intentions. When we say an act is done maliciously, we mean one of 2 distinct means. We mean either that it is done intentionally or that it is done with some wrongful motive.

(14) Negligence Per Se: Negligence established as a matter of law, so that the breach of duty is not a jury question.

1) Negligence Per Se usually arises from a statutory violation.

(15) Positive Misprison: An official's failure to perform the duties of public office.

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- ①⑥ Deliberate Indifference: The careful preservation of one's ignorance despite awareness of circumstances that would put a reasonable person on notice of a fact essential to a crime.
- ①⑦ Gross Negligence: A lack of even slight diligence or care. A conscious, voluntary act or omission in reckless disregard of a legal duty and of the consequences to another party.
- ①⑧ Wanton Misconduct: An act or failure to act when there is a duty to do so, in reckless disregard of another's rights, coupled with the knowledge that injury will probably result.
- ①⑨ Injury: The violation of another's legal right, for which the law provides a remedy; A wrong or injustice.
- 1) Personal Injury: In negligence action, any harm caused to a person. Any invasion of a personal right, including mental suffering and false imprisonment.
- 2) Public Injury: A loss or injury stemming from a breach of duty or violation of a right that affects the community as a whole.
- ②⑩ Good Behavior: A standard by which judges are considered fit to continue in their tenure, consisting in the avoidance of criminal behavior.



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- (21) Malice Exception: A limitation on a public officials qualified immunity, by which the official can face civil liability for willfully exercising discretion in a way that violates a known or well established right.
- (22) Malicious Injury: An injury resulting from a willful act committed with knowledge that it is likely to injure another or with reckless disregard of the consequences.
- (23) Prejudice: Damage or detriment to one's legal rights or claims.
- (24) Every public officer commits extortion and oppression who in the exercise or under the color of exercising the duties of his office abuses any discretionary power with which he is invested in law, the existence of which motive may be inferred either from the nature of the act or from the circumstances of the case.
- (25) Affirmative Statute: A law expressed in positive form to require that something be done; one that directs the doing of an act.
- (26) Oppression: The offense consisting in the abuse of discretionary authority.
- (27) Actual Malice: The deliberate intent to commit an injury, as evidenced by external circumstances.

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②⑧ Supreme Law of the Land: The U.S. Constitution. Acts of Congress made in accordance with the U.S. Constitution. U.S. Treaties.

1) Supremacy: The position of having the superior or greatest power or authority.

②⑨ Justice: The fair treatment of people. The quality of being fair and reasonable. The fair and proper administration of laws.

1) Law cannot be divorced from morality as far as it clearly contains the notion of right to which the moral quality of justice corresponds.

③① Patriot: One who loves and defends his country.

1) Patriotism is a dialogue with your fellow citizens and a larger world about not only what you love about your country, but also how it can be improved. Unchecked nationalism leads to conflict and war. Unbridled patriotism can lead to the betterment of society. Patriotism is rooted in humanity. Nationalism is rooted in arrogance.

③① Thomas Jefferson - First Inaugural Address

"The freedom of religion, freedom of press, freedom of persons under the protection of Habeas Corpus and trial by juries

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impartially selected. These principles form the bright constellation which has gone before us and guided our steps through an age of revolution and reformation. The wisdom of our sages and blood of our heroes have been devoted to their attainment. They should be creed of our political faith and should we wander from them in moments of error, let us hasten to retrace our steps to regain the road that leads to peace and liberty."

③② Common Law: The body of law derived from judicial decisions rather than from statutes or Constitutions. Case Law.

③③ Seperation of Powers: The division of governmental authority into 3 branches of government, each with specific duties on which neither of the other branches can encroach.

1) The doctrine that such a division of governmental authority is most desirable because it establishes checks and balances designed to protect the people against Tyranny.

③④ Common Law Rule: A judge made rule as opposed to a statutory one. A legal rule, as opposed to an equitable one.

1) Equitable: Consistent with principles of justice and right.

③⑤ Government of Laws: The doctrine that government must operate according to established, consistent legal principles and

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not according to the interests of those who happen to be in power at a given time; especially the doctrine that judicial decisions must be based upon the law.

1) We are a nation of laws and those laws are essential to maintaining order and peace, but more importantly, we are a nation of faith. We must return to the faith of our designed system.

③⑥ Legal Realism: The theory that law is based not on formal rules or principles but instead on judicial decisions deriving from social interests and public policy, as conceived by individual judges.

1) This is NOT consistent with Constitutionalism.

2) We see the highly destructive effects of such ignorance in cases like Plessy v. Ferguson

3) This is tyrannical in nature and oppressive to the citizenry.

③⑦ Due Process Clause - 14<sup>TH</sup> Amendment

"No state shall deprive any person of life, liberty or property, without due process of the law."



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- ③⑧ Fourteenth Amendment: The Constitutional amendment, ratified in 1868, whose primary provisions effectively apply the Bill of Rights to the states by prohibiting states from 1) denying due process, 2) denying equal protection of the law and 3) abridging the privileges and immunities of U.S. Citizenship.
- ③⑨ Privileges and Immunities Clause: The Constitutional provision prohibiting a state from favoring or discriminating against citizens.
- ④① Privileges and Immunities Clause - 14<sup>th</sup> Amendment
- "No state shall make or enforce any law which shall abridge the privileges and immunities of Citizens of the United States."
- ④① Civil Liberty: Freedom from undue governmental interference or restraint; especially the right of all citizens to be free to do as they please while respecting the rights of others.
- 1) This term refers to freedoms and other liberties associated with the Bill of Rights.
- ④② Partial Law: A statute designed (usually intentionally) to affect the rights of only one particular person or only certain classes of people, rather than all people.

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## (43) Ninth Circuit Criminal Handbook - Volume I Chapter 15

15.5 (1) (c) Abuse of Discretion: Relative two part test 9<sup>TH</sup> Circuit

"The court analyzes whether the district court applied the wrong test in its legal analysis - An erroneous view of the law is automatically an abuse of discretion."

1) The deprivation for a suspect classification of a fundamental right, under the color of state law demands strict scrutiny, therefore, the Compelling - State - Interest Test must be used.

2) The belief that judge made rulings have legal superiority over the United States Constitution is an obvious erroneous view of the Law.

(44) Fundamental Law: The organic law that establishes the governing principles of a country or state; especially Constitutional Law.

(45) Discriminatory Purpose: A design or desire to restrict the rights of a class of people, especially a protected class.

(46) Seditious Conspiracy: A criminal conspiracy to 1) overthrow or destroy the U.S. government, 2) oppose its authority, 3) prevent the execution of its laws, or 4) seize or possess its property  
1) 18 U.S.C. A. § 2384

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(47) Extortion: The act or practice of obtaining something or compelling some action by illegal means.

1) Any abuse of discretion is extortion.

(48) James Madison - The Federalist

"Through the medium of a chosen body of citizens, whose wisdom may best discern the true interest of their country and whose patriotism and love of justice will be least likely to sacrifice it to temporary or partial considerations."

"On the other hand, the effect may be inverted, Men of factious tempers, of local prejudices, or of sinister designs, may by intrigue, by corruption, or by other means, first obtain suffrages and then betray the interests of the people."

(49) USDC - Western District of Washington - Judge Magistrate Fricke

"While Title 28 U.S.C. § 1343(a)(3) gives the district courts original jurisdiction over equal rights matters, that statute cannot be used by state prisoners."

(50) Civil Action: An action brought to enforce, redress or protect a private or civil right.

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(51) Civil Rights Act: One of several federal statutes enacted after the Civil War (1861-1865) and much later, during the civil rights movement of the 1950's and 1960's, for the purpose of implementing and giving further force to the basic rights guaranteed by the Constitution.

(52) Title 28 U.S.C. §1343 - Civil Rights and Elective Franchise

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person."

3) To Redress the deprivation, under the color of any state law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

(53) Act of Congress: A statute that is formally enacted in accordance with the legislative power granted to Congress by the United States Constitution.

(54) Positive Law: Enacted law - The codes, statutes and regulations that are applied and enforced in the courts. Positive law literally means law established by human authority.

1) A judge is tethered by positive law.



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- (55) Contrary to Law: Illegal; unlawful; conflicting with established law.
- (56) Written Law: Statutory law, together with constitutions and treaties, as opposed to judge-made law.
- 1) Higher form of law than any judge-made ruling.
- (57) Protected CLASS: A class of people who benefit by protection by statute, such as Title VII of the Civil Rights Act of 1964, which prohibits discrimination based on race, sex, national origin, religion or criminal history.
- 1) Prisoners and persons convicted of crimes are a protected CLASS under the Civil Rights Act of 1964.
- (58) Title 42 U.S.C. §1981 - Equal Protection Under the Law
- "All persons within the jurisdiction of the United States shall have the same right in every state to the full and equal benefit of all laws and proceedings."
- (59) Egalitarianism: The belief in human equality, especially when that entails the removal of all inequalities among people.
- 1) Egalitarian: Of, relating to, or involving the belief that all people are equal and should have the same rights and opportunities in life.

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⑥0 Constitutional Law: The body of law deriving from the U.S. Constitution and dealing primarily with governmental powers, civil rights and civil liberties.

1) The field of law dealing with aspects of constitutional provisions, such as restrictions on government powers and guarantees of rights.

⑥1 Sedition is defined as the speaking or writting of words calculated to excite disaffection against the Constitution as by law established, to procure the alteration of it by other than lawful means.

1) In accordance with Article V, an act of Congress of the United States is the only lawful means of altering the provisions of the Constitution. Establishing laws altering the function of the Constitution is Sedition.

⑥2 Equal Protection: The 14<sup>th</sup> Amendment guarantees that the government must treat a person or class of persons the same as it treats other persons or classes in like circumstances.

1) In today's Constitutional jurisprudence, equal protection means that legislation that discriminates must have a rational basis for doing so. And if legislation affects a fundamental right or involves a suspect classification, it is unconstitutional unless it can withstand strict scrutiny.

2) The equal protection principle is exclusively associated with

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written constitutions and embodies guarantees of equal treatment normally applied not only to the procedural enforcement of laws, but also to the substantive content of their provisions. In other words, the equal protection of laws is invariably treated as a substantive Constitutional principle which demands that laws will only be legitimate if they can be described as just and equal.

(63) I am not trying to change the laws, rather I am pointing out what the laws state and that the ways in which they are being enforced directly contradict with what is specified, so I am not trying to change the laws; I am asking that we uphold them! If the laws state that something will be done, in a certain way, then we must follow that way. Laws do not change arbitrarily, that is tyranny. Constitutionalism demands that the laws evolve only through suffrage, therefore it is up to the people to decide whether or not the Constitution applied to them and not a judge or a state.

(64) Constitutional Law § 171 - Duty of State Courts to Protect Constitutional Rights

"(4) State courts, equally with federal courts, are under an obligation to guard and enforce every right secured by the federal Constitution."

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(65) Police State: A state in which the political, economic and social life of its citizens is subject to repressive governmental control and arbitrary uses of power by the ruling elite, which uses its police as instruments of control.

(66) Thomas Jefferson - Objective of Good Government

"The care of human life and happiness and not their destruction is the first and only legitimate objective of good government."

(67) Tyranny: The severe deprivation of a natural right by a ruler wielding power unjustly and arbitrarily to oppress the citizenry. A ruler who wields his power unfairly in order to prevent a person or class of persons from enjoying the same rights as the rest of the citizenry.

(68) Oppression: The act or instance of unjustly exercising authority or power so that one or more people are unfairly or cruelly prevented from enjoying the same rights that other people have.

Oppressor: A person or group that treats certain people unfairly or cruelly, preventing them from enjoying the same rights that other people in society have.



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## (69) James Madison - The Federalist

"No man is allowed to be a judge in his own cause, because his interest would certainly bias his judgment and, not improbably, corrupt his integrity. With equal, nay with greater reason, a body of men are unfit to be both judges and parties at the same time."

- (70) *Procunier v. Martinez*, 416 U.S. 396; 40 L.Ed2d 224; 94 S.Ct. 1800 (1974)  
*Bell v. Wolfish*, 441 U.S. 520; 60 L.Ed2d 447; 99 S.Ct. 1800 (1979)  
*Brown v. Nix*, 33 F.3d 951 (11<sup>th</sup> Cir. 1992)

"A prisoner is not stripped of Constitutional rights (Protections) at the prison gate, but, rather he retains all the rights of an ordinary citizen, except those expressly, or by necessary implication taken from him by the Law."

CR-O

## Court Records

CR1-1 ~ CR1-6 ~ Order Summarily Dismissing Habeas

CR2-1 ~ CR2-2 ~ Judgment in Civil Action

CR3-1 ~ CR3-4 ~ Order Denying Motion for Reconsideration

**Harper, Kelley J. (DOC)**

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**From:** waed\_cmecf@waed.uscourts.gov  
**Sent:** Tuesday, May 14, 2019 12:17 PM  
**To:** waed\_cmecf@waed.uscourts.gov  
**Subject:** Case 4:19-cv-05055-TOR Downing v. State of Washington Order Dismissing Case

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**Eastern District of Washington**

**U.S. District Court**

**Notice of Electronic Filing**

The following transaction was entered on 5/14/2019 at 12:17 PM PDT and filed on 5/14/2019

**Case Name:** Downing v. State of Washington

**Case Number:** 4:19-cv-05055-TOR

**Filer:**

**WARNING: CASE CLOSED on 05/14/2019**

**Document Number:** 4

**Docket Text:**

**ORDER SUMMARILY DISMISSING HABEAS PETITION.** The petition, ECF No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254 Cases in the United States District Courts. The court further certifies that an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. 2253(c); Fed. R. App. P. 22(b). The file is **CLOSED**. Signed by Chief Judge Thomas O. Rice. (LLH, Courtroom Deputy) **\*\*5 PAGE(S), PRINT ALL\*\*** (Tanawah Downing, Prisoner ID: 394345)

**4:19-cv-05055-TOR Notice has been electronically mailed to:**

Tanawah M Downing doccccinmatefederal@doc1.wa.gov

**4:19-cv-05055-TOR Notice has been delivered by other means to:**

The following document(s) are associated with this transaction:

**Document description:**Main Document

**Original filename:**n/a

**Electronic document Stamp:**

[STAMP dcecfStamp\_ID=1069357611 [Date=5/14/2019] [FileNumber=3301722-0]  
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5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 TANAWAH M. DOWNING,

8 Petitioner,

9 v.

10 STATE OF WASHINGTON,

11 Respondent.

NO: 4:19-CV-5055-TOR

ORDER SUMMARILY DISMISSING  
HABEAS PETITION

12  
13 Petitioner, a prisoner at the Coyote Ridge Corrections Center, brings this *pro*  
14 *se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to 28  
15 U.S.C. § 2254. The \$5.00 filing fee has been paid.

16 **PROPER RESPONDENT**

17 An initial defect with the Petition is that it fails to name a proper party as a  
18 respondent. The proper respondent in a federal petition seeking habeas corpus relief  
19 is the person having custody of the petitioner. *Rumsfeld v. Padilla*, 542 U.S. 426  
20 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d 359, 360 (9th Cir. 1994). If the



1 petitioner is incarcerated, the proper respondent is generally the warden of the  
2 institution where the petitioner is incarcerated. *See Ortiz-Sandoval v. Gomez*, 81 F.3d  
3 891 (9th Cir. 1996). Failure to name a proper respondent deprives federal courts of  
4 personal jurisdiction. *See Stanley*, 21 F.3d at 360.

### 5 EXHAUSTION REQUIREMENT

6 Petitioner challenges his 2018 Benton County jury conviction for violating a  
7 domestic violence court order. He was sentenced to 24 months incarceration.  
8 Petitioner indicates that his direct appeal to the Washington State Court of Appeals,  
9 Division III, is still pending. ECF No. 1 at 3.

10 In his grounds for relief, Petitioner argues that the State of Washington has no  
11 jurisdiction to decide federal constitutional matters. ECF No. 1 at 6-13. It has long  
12 been settled that state courts are competent to decide questions arising under the U.S.  
13 Constitution. *See Baker v. Grice*, 169 U.S. 284, 291 (1898) (“It is the duty of the  
14 state court, as much as it is that of the federal courts, when the question of the validity  
15 of a state statute is necessarily involved, as being in alleged violation of any  
16 provision of the federal constitution, to decide that question, and to hold the law void  
17 if it violate that instrument.”); *see also Worldwide Church of God v. McNair*, 805  
18 F.2d 888, 891 (9th Cir. 1986) (holding that state courts are as competent as federal  
19 courts to decide federal constitutional matters). Therefore, Petitioner’s arguments  
20 to the contrary lack merit.

1        Additionally, before a federal court may grant habeas relief to a state prisoner,  
2 the prisoner must exhaust the state court remedies available to him. 28 U.S.C. §  
3 2254(b); *Baldwin v. Reese*, 541 U.S. 27 (2004). Exhaustion generally requires that  
4 a prisoner give the state courts an opportunity to act on his claims before he presents  
5 those claims to a federal court. *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999). A  
6 petitioner has not exhausted a claim for relief so long as the petitioner has a right  
7 under state law to raise the claim by available procedure. *See id.*; 28 U.S.C. §  
8 2254(c).

9        To meet the exhaustion requirement, the petitioner must have “fairly  
10 present[ed] his claim in each appropriate state court (including a state supreme court  
11 with powers of discretionary review), thereby alerting that court to the federal nature  
12 of the claim.” *Baldwin*, 541 U.S. at 29; *see also Duncan v. Henry*, 513 U.S. 364,  
13 365–66 (1995). A petitioner fairly presents a claim to the state court by describing  
14 the factual or legal bases for that claim and by alerting the state court “to the fact  
15 that the . . . [petitioner is] asserting claims under the United States Constitution.”  
16 *Duncan*, 513 U.S. at 365–366; *see also Tamalini v. Stewart*, 249 F.3d 895, 898 (9th  
17 Cir. 2001) (same). Mere similarity between a claim raised in state court and a claim  
18 in a federal habeas petition is insufficient. *Duncan*, 513 U.S. at 365–366.

19        Furthermore, to fairly present a claim, the petitioner “must give the state  
20 courts one full opportunity to resolve any constitutional issues by invoking one

1 complete round of the State's established appellate review process." *O'Sullivan*,  
2 526 U.S. at 845. Once a federal claim has been fairly presented to the state courts,  
3 the exhaustion requirement is satisfied. *See Picard v. Connor*, 404 U.S. 270, 275  
4 (1971). It does not appear from the face of the Petition or the attached documents  
5 that Petitioner has exhausted his state court remedies as to each of his grounds for  
6 relief. Indeed, Petitioner affirmatively represents that he did not exhaust his state  
7 court remedies.

### 8 **GROUND FOR FEDERAL HABEAS RELIEF**

9 Petitioner asserts that the Washington state constitution contradicts the federal  
10 constitution regarding the Fifth Amendment right to "presentment or indictment of  
11 a Grand Jury." He claims "no bill of indictment" was brought against him rendering  
12 his arrest, conviction and imprisonment illegal.

13 Petitioner seems to argue that because the state courts have defied "federally  
14 established procedures and processes for the adjudication of crimes" only "a court  
15 of federal jurisdiction" has jurisdictional authority over his claims. His bald  
16 assertion that "due process of the law was ignored" is unsupported by his factual  
17 allegations.

18 The United States Supreme Court stated long ago: "Prosecution by  
19 information instead of by indictment is provided for by the laws of Washington.  
20 This is not a violation of the Federal Constitution." *See Gaines v. State of*

1 *Washington*, 277 U.S. 81, 86 (1928). Consequently, Petitioner's assertions to the  
2 contrary presented in his four grounds for federal habeas relief are legally frivolous.

3 Because it plainly appears from the petition and the attached exhibits that  
4 Petitioner is not entitled to relief in this Court, **IT IS ORDERED** the petition, ECF  
5 No. 1, is **DISMISSED** pursuant to Rule 4, Rules Governing Section 2254 Cases in  
6 the United States District Courts.

7 **IT IS SO ORDERED.** The Clerk of Court is directed to enter this Order,  
8 enter judgment, provide copies to Petitioner, and close the file. The Court certifies  
9 that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be  
10 taken in good faith, and there is no basis upon which to issue a certificate of  
11 appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of  
12 appealability is therefore **DENIED**.

13 **DATED** May 14, 2019.



15 *Thomas O. Rice*  
THOMAS O. RICE  
16 Chief United States District Judge



CR2-1

**Harper, Kelley J. (DOC)**

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**From:** waed\_cmecf@waed.uscourts.gov  
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**Eastern District of Washington**

**U.S. District Court**

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The following transaction was entered on 5/14/2019 at 12:23 PM PDT and filed on 5/14/2019

**Case Name:** Downing v. State of Washington

**Case Number:** 4:19-cv-05055-TOR

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**WARNING: CASE CLOSED on 05/14/2019**

**Document Number:** 5

**Docket Text:**

**JUDGMENT IN A CIVIL ACTION. (LLH, Courtroom Deputy) \*\*1 PAGE(S), PRINT ALL\*\* (Tanawah Downing, Prisoner ID: 394345)**

**4:19-cv-05055-TOR Notice has been electronically mailed to:**

Tanawah M Downing docrcinmatefederal@doc1.wa.gov

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[STAMP dcecfStamp\_ID=1069357611 [Date=5/14/2019] [FileNumber=3301725-0]  
] [a310c64009790d81f83f7c8be0b15df58bf607adc3bcb4a2dcc57c688ba93f7e007  
6759d56aab2c9bd4612ca4c98cd217dff635321dd1769c81f3ef9db0c5eae]]

## UNITED STATES DISTRICT COURT

for the  
Eastern District of Washington

TANAWAH M. DOWNING,

Plaintiff

v.

Civil Action No. 4:19-CV-5055-TOR

STATE OF WASHINGTON,

Defendant

## JUDGMENT IN A CIVIL ACTION

The court has ordered that (check one):

☐ the plaintiff (name) \_\_\_\_\_ recover from the  
defendant (name) \_\_\_\_\_ the amount of  
\_\_\_\_\_ dollars (\$ \_\_\_\_\_), which includes prejudgment  
interest at the rate of \_\_\_\_\_ %, plus post judgment interest at the rate of \_\_\_\_\_ % per annum, along with costs.

☐ the plaintiff recover nothing, the action be dismissed on the merits, and the defendant (name) \_\_\_\_\_  
recover costs from the plaintiff (name) \_\_\_\_\_

☒ other: Petitioner's Petition is DISMISSED.

This action was (check one):

☐ tried by a jury with Judge \_\_\_\_\_ presiding, and the jury has  
rendered a verdict.

☐ tried by Judge \_\_\_\_\_ without a jury and the above decision  
was reached.

☒ decided by Judge Thomas O. Rice \_\_\_\_\_ pursuant to Rule 4, Rules Governing  
Section 2254 Cases in the United States District Courts.

Date: May 14, 2019

CLERK OF COURT

SEAN F. McAVOY

s/ Linda L. Hansen

(By) Deputy Clerk

Linda L. Hansen

DOCUMENTS

**Harper, Kelley J. (DOC)**

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**From:** waed\_cmecf@waed.uscourts.gov  
**Sent:** Thursday, May 23, 2019 1:13 PM  
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**Subject:** Case 4:19-cv-05055-TOR Downing v. State of Washington Order on Motion for Reconsideration

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**Eastern District of Washington**

**U.S. District Court**

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**Case Name:** Downing v. State of Washington

**Case Number:** 4:19-cv-05055-TOR

**Filer:**

**WARNING: CASE CLOSED on 05/14/2019**

**Document Number:** 7

**Docket Text:**

**ORDER denying [6] Construed Motion for Reconsideration. The Court certifies that pursuant to 28 U.S.C. § 1915(a)(3), an appeal from this decision could not be taken in good faith, and there is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b). A certificate of appealability is therefore DENIED. The file remains CLOSED. Signed by Chief Judge Thomas O. Rice. (BF, Paralegal) \*\*TEXT-ONLY-ENTRY, 3 PAGES, PRINT ALL\*\* (Tanawah Downing, Prisoner ID: 394345) Modified on 5/23/2019 to reflect this is not a text-only entry and direct prison to print all pages (CV, Case Administrator).**

**4:19-cv-05055-TOR Notice has been electronically mailed to:**

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1  
2  
3  
4  
5 UNITED STATES DISTRICT COURT  
6 EASTERN DISTRICT OF WASHINGTON

7 TANAWAH M. DOWNING,

8 Petitioner,

9 v.

10 STATE OF WASHINGTON,

11 Respondent.  
12

NO: 4:19-CV-5055-TOR

ORDER DENYING CONSTRUED  
MOTION FOR RECONSIDERATION

13 BEFORE THE COURT is Petitioner's construed Motion for Reconsideration,  
14 ECF No. 6. This matter was submitted for consideration without oral argument. The  
15 Court has reviewed the record and is fully informed. For the reasons set forth below,  
16 the Motion for Reconsideration is **DENIED**.

17 By Order filed May 14, 2019, the Court summarily dismissed Mr. Downing's  
18 *pro se* Petition for Writ of Habeas Corpus by a Person in State Custody pursuant to  
19 28 U.S.C. § 2254. ECF No. 4. Petitioner had not named a proper Respondent.  
20 *Rumsfeld v. Padilla*, 542 U.S. 426 (2004); *Stanley v. Cal. Supreme Court*, 21 F.3d



1 359, 360 (9th Cir. 1994). He conceded that he did not fully exhaust his state court  
2 remedies before filing his petition. 28 U.S.C. § 2254(b); *Baldwin v. Reese*, 541 U.S.  
3 27 (2004); *O'Sullivan v. Boerckel*, 526 U.S. 838 (1999). Exhaustion is required.

4 Finally, the Court found Petitioner's assertion that the failure to prosecute him  
5 by indictment, rather than by information, was legally frivolous. *See Gaines v. State*  
6 *of Washington*, 277 U.S. 81, 86 (1928) ("Prosecution by information instead of by  
7 indictment is provided for by the laws of Washington. This is not a violation of the  
8 Federal Constitution."). In his construed Motion for Reconsideration, Petitioner  
9 once again asks this Court to direct the State of Washington to present a "Bill of  
10 Indictment" to justify the criminal legal process taken against him. ECF No. 6 at 1.  
11 Petitioner's request is squarely foreclosed by *Gaines*.

12 A motion for reconsideration may be reviewed under either Federal Rule of  
13 Civil Procedure 59(e) (motion to alter or amend a judgment) or Rule 60(b) (relief  
14 from judgment). *Sch. Dist. No. 1J v. ACandS, Inc.*, 5 F.3d 1255, 1262 (9th Cir.  
15 1993). "A district court may properly reconsider its decision if it '(1) is presented  
16 with newly discovered evidence, (2) committed clear error or the initial decision was  
17 manifestly unjust, or (3) if there is an intervening change in controlling law.'" *Smith*  
18 *v. Clark Cnty. Sch. Dist.*, 727 F.3d 950, 955 (9th Cir. 2013) (quoting *School Dist.*  
19 *No. 1J*, 5 F.3d at 1263). "There may also be other, highly unusual, circumstances  
20 warranting reconsideration." *School Dist. No. 1J*, 5 F.3d at 1263. These standards

1 apply in habeas corpus proceedings under 28 U.S.C. § 2254 to the extent they are  
2 not inconsistent with applicable federal statutory provisions and rules. *See Gonzalez*  
3 *v. Crosby*, 545 U.S. 524, 530 (2005).

4 In this instance, Petitioner has not presented newly discovered evidence. *See*  
5 *School Dist. No. II*, 5 F.3d at 1263. He has not shown that the Court committed  
6 clear error or that the dismissal Order was manifestly unjust. Furthermore, there has  
7 been no intervening change in controlling law and there are no other circumstances  
8 warranting reconsideration. *Id.*

9 **ACCORDINGLY, IT IS ORDERED:**

10 Petitioner's construed Motion for Reconsideration, ECF No. 6, is **DENIED**.  
11 The Clerk of Court is directed to enter this Order and provide a copy to Petitioner.  
12 **The file shall remain closed.** The Court certifies that pursuant to 28 U.S.C. §  
13 1915(a)(3), an appeal from this decision could not be taken in good faith, and there  
14 is no basis upon which to issue a certificate of appealability. 28 U.S.C. § 2253(c);  
15 Fed. R. App. P. 22(b). A certificate of appealability is therefore **DENIED**.

16 DATED May 23, 2019.



20  
THOMAS O. RICE  
Chief United States District Judge

DATE:

NAME:

E-Filed Document